

Current International Trade Issues Affecting the Australian Seafood Industry

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Since its establishment in 2003, the Institute for International Trade has produced studies of international trade and investment issues for a large number of clients in international intergovernmental organizations, the Australian Commonwealth and State governments and business associations and private companies in Australia and overseas.

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Introduction

Over the past thirty years, international trade in fish and fisheries products has grown significantly and today over 50 percent of the value of fisheries production and about 40 percent of the live weight equivalent of fish and fish products enter international trade. Around the world, some 200 million people are employed in the fisheries sector – mostly in developing countries. At the same time, all but four of the world's key fishing regions (about 75 percent of the world's fish stocks) is harvested at or beyond the regions' sustainable limits.¹

The Australian seafood sector now achieves gross production worth in excess of AUD\$ 2 billion per annum, generates exports worth in excess of AUD\$ 1.5 billion, and employs significant numbers of Australians in rural and regional areas of the country. The sector has the potential to be a much bigger contributor to exports, employment and national wealth provided that Governments in Australia are undertake to work more effectively wit the seafood industry to reduce or eliminate overseas barriers to Australian seafood exports, develop new ways to produce and harvest seafood at home and take steps to ensure that high quality Australian seafood production can be sustainably maintained over time.

International trade policy has a significant bearing on patterns of trade in fish and fisheries products. Bilateral, regional and multilateral trade agreements address trade in fish and most traditional trade policy instruments have been used by governments to erect barriers to the trade. Tariffs have declined importantly in some markets over the past several decades, but in many markets, tariffs and various forms of non-tariff barriers still have a significant effect on trade in fish. Tariff escalation is a frequent problem and increasingly technical, food safety and environmental standards are being used to interfere with fish trade. With the accession to the WTO of China (2001) and Vietnam (2007), all major fishing countries, with the exception of Russia (in the process of accession) have joined the World Trade Organization (WTO).

This report, commissioned by the Australian Seafood Cooperative Research Centre, briefly examines the major international trade negotiations in which Australia has participated or is participating and gives an overview of the implications of those negotiations for the seafood industry in this country. The report addresses both the multilateral trade negotiations now underway at the World Trade Organization in Geneva and Australia's bilateral and regional trade negotiating efforts in the Asia-Pacific area.

¹ ICTSD, *Fisheries, International Trade and Sustainable Development* (2006), page 1

I. The World Trade Organization & the Doha Round Negotiations

(A) *The World Trade Organization & the multilateral trading system*

(1) Introduction

On 1 January 1995 the World Trade Organization officially came into existence. It was the product of seven years of complex negotiations among countries from around the world, 76 which joined this new international organization at the time, and another 50 of which became members shortly thereafter. The Uruguay Round of trade negotiations lasted from 1986-1994 and yielded a lengthy package of trade treaties, collected under the umbrella *Marrakesh Agreement Establishing the World Trade Organization*, known simply as the "*WTO Agreement*". Over 550 pages of agreements set out rules, rights and obligations in a broad range of areas for countries involved in international trade. In addition to these general rules of trade, each WTO member filed lengthy annexes containing long lists of its individual commitments on things like tariff levels for goods, maximum levels of agricultural subsidies, and the extent of its willingness to open its market to foreign service suppliers. All told, these amounted to a staggering 22,500 pages of specific commitments!

For the first time, internationally-agreed disciplines were extended beyond trade in goods to cover trade in services and trade-related intellectual property rights. Rules relating to trade in goods, which had existed since 1947 under the General Agreement on Tariffs and Trade (GATT), were added to and elaborated in multiple agreements dealing with specific issues such as agriculture, sanitary and phytosanitary standards, subsidies, anti-dumping, customs valuation and import licensing. A robust mechanism for the settlement of trade disputes was created to underpin the new rules and assist in their enforcement. In addition, the Uruguay Round package provides for comprehensive reviews of the trade policies of each WTO Member to be undertaken on a periodic basis. The results of these reviews are discussed among all WTO Members, and also made public, thereby enhancing regulatory transparency for traders and assisting in the identification of barriers to market access.

The agreements, rights and obligations generated by the Uruguay Round form part of a "single undertaking" or "package deal". The countries that are members of the WTO must sign *all* of the agreements and accept *all* of the obligations that they contain: it is not possible to pick and choose only some of them.

(2) The WTO as an institution

Today, the WTO includes 152 Members, with several more—most notably Russia—currently in the process of negotiating accession to the Organization. The seat of the WTO is in Geneva, Switzerland. The WTO Secretariat employs an international staff of roughly 650, whose main

function is to provide support to the WTO and its members. The WTO budget amounted to just over \$AUD 180 million in 2007, and is funded primarily through contributions from each member State, calculated as a function of its share of international trade.

As an institution, the WTO plays four main roles. First, it serves as a forum for the administration of the various WTO agreements and the rights and obligations of WTO Members. Secondly, it provides a mechanism for the settlement of international trade disputes relating to WTO rules for its Members. Thirdly, it provides technical assistance, training and capacity building to developing country Members of the WTO. And, lastly, the WTO serves as a forum for the negotiation of new rules of trade among its Members. The current round of trade negotiations was launched in November 2001 in Doha, Qatar, and is known as the “Doha Development Agenda” (DDA), “Doha Development Round”, or simply the Doha Round.

A key characteristic of the WTO is that it is a “member-” and “consensus-” driven organization. This means that it is the countries and governments which comprise the WTO membership control the WTO’s agenda and take all decisions, and that those decisions are, as a rule, taken by consensus.² In this respect, the WTO has adhered to the tradition inherited from the days of the GATT of taking decisions only by consensus, rather than by vote. Even though the *WTO Agreement* contains formal rules that would allow decisions to be taken by either three fourths or two thirds of the WTO Membership, in practice decisions are taken by consensus—which does not mean that every Member must indicate its express acceptance of a decision, but it does mean that each Member effectively has the power to block a decision by stating an explicit objection. It is important to note that the dispute settlement mechanism contains important exceptions to this rule, discussed briefly in Section II.C below. Many commentators on the WTO, as well as two eminent persons’ groups that have undertaken a critical examination of the WTO in recent years, have recommended a move away from consensus decision-making as a key reform for the future effectiveness of the system.³ Yet the principle of consensus decision making is deeply embedded in the multilateral trading system and change to it is likely to be met with significant resistance. The WTO is composed of sovereign states, many of which have some difficulty accepting that a degree of sovereignty must be sacrificed in favour of “majority-rule”, and even more difficultly selling that concept to their domestic constituencies.

(3) A brief look at selected WTO disciplines

² The WTO Secretariat does not have a formal role in WTO decision-making. Nor do representatives of private industry, external bodies or other international organizations, or non-governmental organizations. In practice, however, many WTO member governments consult closely with industry and other public and private interests with respect to the positions they adopt within the WTO.

³ Report of the First Warwick Commission, *The Multilateral Trade Regime: Which Way Forward?* (University of Warwick, 2007), available at <<http://www2.warwick.ac.uk/research/warwickcommission/report>>; Report by the Consultative Board to the Director-General Supachai Panitchpakdi, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (WTO, 2004), available at <http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm>

WTO rules are lengthy and complex, and apply to trade in fish and fisheries products in a myriad of different ways. Without attempting to catalogue them all, it is worth highlighting a few core WTO principles. In particular, three core principles created in 1947 under the GATT continue to be fundamental part of WTO disciplines. Two are rules of non-discrimination, and the third involves commitments regarding tariff levels.

- **Most-favoured-nation (MFN) treatment.** This bedrock principle of international trade requires each WTO member to treat all of its trading partners equally. Any benefit or advantage—such as a lower tariff applied to imports—that it grants to one trading partner must also be granted to all WTO members. A number of exceptions to the MFN principle exist today, such as the possibility to apply lower tariff rates to partners in a regional free trade agreement or to allow goods from least-developed countries to enter duty-free, but the basic requirement remains in force and is reflected in various WTO agreements relating to trade in goods, services and intellectual property.
- **National treatment.** The second principle of non-discrimination requires each WTO member to give equal treatment to imported goods and domestic goods—once the imported goods have crossed the border into the domestic market. For goods, this rule prohibits, for example, applying higher taxes to imported goods than to domestic goods, or restricting the points of sale for imported goods but not domestic goods. Exceptions also apply to this basic rule, and some discrimination may be allowed for legitimate reasons, such as the protection of human health or the conservation of exhaustible natural resources.
- **Tariff Bindings.** The WTO rules do not require all members to charge the same tariff on the same product. Nor do they require a country to apply a single across-the-board tariff rate to all types of imported goods. Instead, since the time of the GATT, member States have been asked to commit to a maximum tariff level that they will charge in respect of each type of imported product. Having done so by inscribing that tariff level in a legally-binding schedule kept on file at the WTO, the country concerned is prohibited from subsequently applying a tariff to an imported product that exceeds the maximum level that it has committed to for that product in its schedule. These commitments are known as “tariff bindings” and much of the work of the GATT and the WTO has focused on increasing the coverage of tariff bindings (the number of products in respect of which commitments are made) and lowering the levels at which each country’s tariffs are bound. Although these tariff commitments act as “ceilings”, WTO members may, and many developing countries do, apply tariff rates that are lower than the level they have bound in their schedule.

These three principles, along with the objectives of promoting transparency, allowing some special/more flexible treatment for developing countries, and of creating a rules-based system that ensures a secure and predictable environment for the conduct of international trade,

permeate the WTO system as a whole, and are reflected in different ways in the various agreements.

One of the agreements resulting from the Uruguay Round is dedicated specifically to trade in agricultural goods – the *Agreement on Agriculture*. However, that agreement defines the products that it covers – and this definition specifically *excludes* fish and fish products. Fisheries products therefore fall within the residual category of industrial products. The commitments made in the Uruguay Round resulted in tariffs being bound for 99 percent of tariff lines in developed country members, 73 percent for developing country members, and 98 percent for members that are economies in transition. In addition, average bound tariffs for imports of industrial goods into developed countries were cut by 40%, with the average tariff level for such goods falling from 6.3% to 3.8%.⁴

(4) Previous negotiating rounds in the WTO

Although the WTO only came into existence in 1995, the regulation of world trade through international trade treaties has a much longer history. In the wake of the Second World War, nations set out to create three international economic institutions: the World Bank, the International Monetary Fund, and an International Trade Organization (ITO). The first two of these “Bretton Woods” institutions were successfully created, but a failure to get the necessary US Congressional approval thwarted the creation of the ITO. At the same time, many of the same countries were involved in negotiations to reduce and bind tariff levels. Having completed work on a provisional agreement, and on cutting tariff levels and committing not to raise them in future, 23 of these countries decided, notwithstanding the looming failure of the ITO, to proceed on the basis of their provisional agreement: the General Agreement on Tariffs and Trade, or the “GATT”. The GATT came into effect on 30 June 1948, and together, the schedules setting the individual tariff commitments of the participating countries contained 45,000 tariff concessions affecting \$10 billion of trade, or about one fifth of total world trade at the time.⁵ Over subsequent decades, the number of GATT countries continued to grow, and they continued to hold rounds of trade negotiations aimed at further reducing tariffs.

As average tariff levels came down, traders seeking access to foreign markets came to be more aware of and affected by other types of measures. In addition, although *average* tariff levels were reduced significantly, many countries continued to maintain isolated high tariffs on specific products – typically products they produced domestically and wished to protect. These isolated high tariffs are known as “tariff peaks”. Another evolution in tariff patterns involved the reduction of tariff levels applied to primary and unprocessed goods, without corresponding reductions in tariff levels applied to processed and manufactured goods. This phenomenon—higher tariff levels apply to more processed goods—is called “tariff escalation”.

⁴ *Understanding the WTO*, p. 25.

⁵ *Understanding the WTO* (WTO Secretariat, 2007), p. 15.

These developments had an impact on the content of trade rounds. One consequence was that, over the course of the various trade rounds held between 1947 and 1996, efforts were made to target particularly high tariffs. Whereas initial rounds resulted in agreements to cut tariffs by a flat rate, later rounds introduced tariff-cutting formulae designed to require greater cuts the higher the individual tariff. A second development, beginning in the 1964-1967 Kennedy Round, was that negotiators began to look beyond tariffs and try to agree rules on dealing with another type of measure that was increasingly affecting trade: anti-dumping measures. These efforts were continued and extended in the 1973-1979 Tokyo Round, where efforts were made to agree rules in a variety of new areas, including on technical barriers to trade, subsidies and countervailing duties, and government procurement. The extension of trade rules into these new areas proved controversial, however, with the result that not all GATT contracting parties were willing to sign on to the new rules. Accordingly, nine separate agreements, or “Codes” were created, and GATT participants could decide whether to sign on to them or not. These voluntary, or plurilateral agreements considerably increased the complexity of the international trading system because membership in each code was different, and different from membership in the GATT itself. The complexity and fragmentation of the system that resulted from the Tokyo Round Codes was one of the main reasons why the results of the Uruguay Round were presented as a “single undertaking”.

Table 1 - GATT Negotiating Rounds

Years	Name of Round	Subjects Covered	No. of Participating Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Dillon	Tariffs	26
1964-1967	Kennedy	Tariffs and anti-dumping measures	62
1973-1979	Tokyo	Tariffs, non-tariff measures, 9 plurilateral “Codes” on subsidies, countervailing duties, anti-dumping measures, technical barriers to trade, etc.	102
1986-1994	Uruguay	Tariffs, non-tariff measures, services, intellectual property, dispute settlement, textiles, agriculture, creation	123

		of WTO, etc	
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Source: *Understanding the WTO* (WTO Secretariat, 2007), p. 16

(B) Overview of the Doha Round negotiations

Soon after the Uruguay Round package of agreements had come into effect, WTO Members began to think about future negotiations. Several of the WTO Agreements generated by the Uruguay Round included provisions for built-in review and future negotiations. This was the case, for example, both in the *General Agreement on Trade in Services* and the *Agreement on Agriculture*. At the conclusion of the Uruguay Round, many Members felt that the real achievement of the Round lay in bringing these two sensitive sectors within the scope of WTO disciplines and making commitments binding, rather than in the *content* of those commitments. At the time, many felt that real liberalization in both sectors, along with meaningful commitments to reduce agricultural subsidies, would only come through future negotiations. In addition, as developing countries confronted the challenge of implementing an enormous package of complex WTO obligations in their domestic systems, many were confirmed in, or came around to, the view that the results of the Uruguay Round had not taken sufficient account of developing country strategic interests or of their particular constraints and limitations. Many of these countries thus pushed for a new round that would “redress the balance” and impose greater liberalization and stricter disciplines on developed countries in areas of export interest to developing countries (such as reducing tariff escalation⁶ and agricultural subsidies, and increasing mobility for service providers), and allow additional flexibilities to developing countries.

WTO Members first sought to launch a new round of trade negotiations at the Third Ministerial Conference held in Seattle in 1999. Widespread public protests and a lack of agreement amongst WTO Members as to the negotiating mandate contributed to a failure to get the round off the ground at that time. Two years later, however, the Members tried again and, in at their Fourth Ministerial Conference in Qatar in November 2001, the WTO Members adopted a Declaration setting out the Doha Development Agenda (DDA).

The DDA contains a broad mandate for negotiations, along with an ambitious timeframe. The original target completion date of January 2005 was extended several times, and at present

⁶ Tariff escalation is the practice of maintaining lower tariffs on primary or unprocessed products, and higher tariffs on processed or manufactured goods. This creates an incentive to export goods without further processing and, in view of many developing countries, also has the effect of depriving their exporters of the additional rents associated with the higher-value, more processed goods, and of impeding the development of their processing and manufacturing industries.

there is no fixed deadline for completion of the Round. The needs and interests of developing countries were placed at the core of the DDA.

A broad range of issues was included in the negotiations, including: agriculture, non-agricultural market access (known as “NAMA”, which is essentially dealing with the reduction of tariffs on industrialized goods), trade in services, some issues relating to intellectual property, disciplines on anti-dumping, subsidies (including fisheries subsidies), regional trade agreements, trade and the environment, and flexible treatment for developing countries (referred to in the WTO as “special and differential treatment”). Certain issues relating to implementation of existing WTO obligations were also folded into the DDA, along with four new issues: investment; competition; government procurement and trade facilitation. Of these four issues, three have now officially been dropped from the DDA, and since August 2004 only the last one, trade facilitation, is still part of the ongoing negotiations. Negotiations on clarifying and improving the WTO’s dispute settlement mechanism are also part of the DDA.

In terms of the negotiating process, the Doha Ministerial Declaration lays down a number of guiding principles. Negotiations are supervised by a Trade Negotiations Committee, comprised of all WTO members and led by the WTO’s Director-General (currently Pascal Lamy, of France, formerly the EC Trade Commissioner). Importance is attached to conducting the negotiations in a transparent and inclusive fashion: all WTO members are to have full opportunity to be involved. A separate negotiating group has been created for each of the main topics (agriculture, NAMA, services, etc.), chaired by an Ambassador from a WTO member. Each group operates somewhat differently depending on the topic it is dealing with and the leadership of the group, but in general the negotiations have proceeded in some mix of formal meetings open to all WTO Members, combined with smaller groups meeting in working session, and informal meetings between small or larger groups of WTO Members taking place from time to time in various locations. The main groups report periodically to the Trade Negotiations Committee on their progress.

A key feature of the negotiations is that—with the exception of the negotiations on dispute settlement—they are to be conducted as a “single undertaking”. This means that the final outcomes on *all* of the topics under negotiation (except dispute settlement) must be accepted together, or not all. The concept of a single undertaking is akin to a “package deal”, or the idea that “nothing is agreed until everything is agreed”. In principle, this “single undertaking” is intended to create scope for trade-offs in the negotiations. For example, a country that heavily subsidizes its agricultural sector might be willing to accept deeper cuts to the allowable subsidy levels if it can obtain greater market access for its services providers in the markets of other WTO members, or lower tariffs on manufactured goods. WTO members cannot pick and choose amongst the results of the various negotiating groups, they must subscribe to all or nothing.

This structure of the negotiations: division into a number of discrete groups, each discussing one area of reform, combined with the ultimate goal of a single undertaking, raises the question of at what point in the process the “trade-off” discussions should begin. There is no clear answer to this question, and it is one that is currently causing some difficulties in the Doha

negotiations. So far the substantive negotiations have, for the most part, been conducted in separately for each topic in the main negotiating groups. The aim is to reach a certain level of clarity as to possible outcomes for each subject, and only at that juncture to broaden the scope of discussions to allow the necessary scope and flexibility to achieve final agreement through trade-offs and finalization of the details in each area. Yet there is little clarity as to where the threshold for the transition to “horizontal” negotiations lies, nor as to whether the broadening of discussions across areas should occur in a gradual sequence (say, beginning with agriculture and NAMA), or be opened up all at once so as to allow maximum scope for trade offs.

Since the outset of the DDA, there has been fairly widespread recognition among the WTO membership that the first key step is to be the establishing of “modalities” in the agriculture and NAMA discussions. In essence, the word “modalities” refers to the parameters, or framework of the deal that will be made. In these two areas, in particular, the technical complexity and detail involved mean that even once the outline of a deal has been reached, many more months of work will be needed to translate that into the final agreement.

The NAMA negotiations concern tariff-cutting on industrial goods—a category which includes fish and fish products.⁷ Thus, in the NAMA negotiations, “modalities” refers to the rules and formulae that will be applied to cut those tariffs. To date, Doha Round participants have agreed several broad principles: (1) the level of ambition in NAMA will be comparable to that in the agriculture negotiations; (2) that developing countries will not have to cut tariffs as much as developed countries; and (3) that tariff cuts will be made pursuant to a “Swiss” formula, which means that a coefficient is applied to all of a country’s tariffs such that higher tariffs are subject to deeper cuts than lower tariffs. The lower the coefficient applied, the higher the cuts. Yet Members remain far apart on many issues, including: (1) What coefficient should apply? The latest proposed from the Chair of the NAMA negotiating group attempts to narrow the issue by identifying coefficient *ranges*, which differ for developed countries and developing countries, but it is not yet clear that even a number within these ranges will be acceptable; (2) What degree of *flexibility* should be afforded developing countries? They will be subject to a higher coefficient (lower overall cuts), but developing countries also want to be able to exempt certain particularly sensitive products from the cuts that would be required. What percentage of tariff lines should they be permitted to exempt? Should those tariff lines be wholly exempted from the required cuts, or subjected to an obligation to cut, just by a lesser amount? The NAMA negotiations are discussed in greater detail below in Section II (A) of this report.

In the agriculture negotiating group, at present it seems that WTO members are somewhat closer to agreeing “modalities”, even though the issues involved are arguably more complex. Unlike NAMA, the agriculture negotiations are not focused solely on tariff-cutting. This is one pillar of the negotiations, and it raises similar issues to those identified under NAMA, with the

⁷ As explained above, WTO rules do not require all WTO members to charge the same tariff on the same good, nor do they require each member to charge the same tariff on all goods entering the country. What WTO rules do, however, is require that each member commit to a maximum tariff that it will charge on a given product. Having made such a tariff binding, the member concerned must not raise the tariff on that good beyond the specified level (although a lower tariff may be charged), and must not discriminate among WTO Members in applying tariffs to imports of that particular good from any WTO member.

additional wrinkle that, due to the sensitivity of the agricultural sector, not only developing countries, but also developed countries want the right to exempt a certain number of products from the required cuts. The other two elements of the agriculture negotiations relate to disciplines on subsidies, both export subsidies and domestic support for farmers. There is broad agreement that all export subsidies will have to be phased out, most likely by 2013. Domestic support will, however, continue to be allowed, within limits. Agreement has yet to be reached, however, as to what those limits should be—in particular for the US, the EC and Japan—or on the definition of the type of support that will be counted towards those maximum limits.

The degree of clarity that will be needed on NAMA and agriculture “modalities” before proceeding to the next step of the negotiations is not clear. What is clear, however, is that the members of the WTO are not there yet. Another uncertainty pertaining to the next, horizontal phase of the negotiations, relates to the scope of that phase. Earlier this year, the WTO’s Director-General, Pascal Lamy, was advocating a first horizontal process that would be limited to NAMA and agriculture issues. This was met with resistance from WTO members particularly interested in the trade in services negotiations (for example India and the European Communities) and those who attach importance to the so-called “rules” (anti-dumping, subsidies) negotiations (such as Japan). Accordingly, it seems that once the horizontal process begins, it will encompass not only NAMA and agriculture, but also some level of discussion on services and rules.

History of the DDA so far

Since the launch of the Round in 2001, there have been a number of meetings and Ministerial Conferences and other key events.

- 2003 Cancún Ministerial meeting. Although the objective of this meeting was to reach agreement on modalities in agriculture and NAMA, this proved impossible. WTO members disagreed, in particular, over whether the four new “Singapore” issues (competition, investment, government procurement and trade facilitation) should continue to be included in the negotiations, and many blamed this disagreement for the ultimate failure of this meeting to yield any concrete results.
- 2004: At a meeting held in Geneva, Ministers accepted the “July Package”, which included agreement on a rudimentary framework for agriculture and NAMA, and on the launch of negotiations on one of the “Singapore issues”, namely trade facilitation.
- 2005 Hong Kong Ministerial Conference. This high-level meeting yielded modest results. Progress was made in outlining more parameters for modalities on agriculture⁸

⁸ Members agreed to end farm export subsidies by the end of 2013, to end cotton export subsidies by 2006 and to eliminate all tariffs and quotas on LDC cotton exports by 2008. It was agreed to classify domestic support levels into three bands, each of which would be subject to different reduction commitments. With respect to market access for agricultural goods, it was agreed to classify tariffs into four bands, each of which would be subject to different reduction commitments, and that developing countries would be entitled to designate some special

Members also approved changes to TRIPS Agreement making permanent a decision on patents and public health. In addition, members agreed to institute duty- and quota-free access for goods from LDCs by 2008 for 97% tariff lines.

- July 2006. Following a lack of progress, Director-General Lamy suspended the negotiations indefinitely.
- February 2007. Negotiations resumed.
- 17 July 2007. Draft modalities papers circulated for NAMA and agriculture, followed by intensive consultations over several months.
- February 2008. Revised draft modalities papers in NAMA and agriculture circulated.
- May 2008: over the course of the month the Chairs of the negotiating groups on NAMA, agriculture, services and rules all issued papers. For NAMA and agriculture these were revised versions of the draft modalities papers, for services it was an indication of the elements that the Chair considers are necessary for completion of the services negotiations, and for rules it was a compilation of all proposals that have been made in the negotiations and of the reactions to those proposals.

Speaking at an OECD meeting on 5 June 2008, WTO Director-General Lamy expressed the view that “the moment of truth” is near. He is endeavouring to hold a meeting of trade ministers in Geneva within the next month or two in order to finalize modalities in NAMA and agriculture. It also seems clear that at around the same time there will need to be some discussion of the state of negotiations in services and rules, although it does not seem likely that such discussions will receive the same level of focus or attention as NAMA and agriculture.⁹ The Director-General continues to express hope that the Round can be concluded by the end of 2008, and has also referred to recent international developments, including high food and oil prices, as contributing to the impetus to reach a deal sooner rather than later.

At this point, however, concluding the Round by the end of 2008 seems ambitious. The existing texts on NAMA and agriculture have yet to be accepted. The NAMA text, in particular, has been the subject of much criticism and on 2 June 2008 the Chair of the Negotiating Group suspended meetings due to a lack of progress. Even if agreement could be reached on modalities in NAMA and agriculture, months of technical work will be needed to translate that agreement into 152 individual schedules for each WTO Member. Moreover, there are many other significant issues that are part of the DDA where negotiators have not yet reached

products which would be treated more favourably in terms of tariff reduction commitments. Lastly, it was agreed to create a special safeguard mechanism that would be available to developing countries.

⁹ With respect to services, for example, it seems that while this issue will not formally be part of the next-step “horizontal” process discussing NAMA and agriculture, a services “signalling exercise” among trade ministers will be held at around the same time as the Ministerial meeting on modalities. According to the Chair of the services negotiating group, “At the signalling exercise, participating ministers will indicate how they might improve their services offers. Subsequently, the TNC chair will make an oral report on this exercise to the TNC. The purpose of the signalling exercise is to provide comfort to members regarding progress in the request/offer negotiations in services, while awaiting the actual revised offers.”

agreement—not just services and rules, but also trade facilitation, trade and environment, certain intellectual property issues, and others. Given the need for a single undertaking, negotiators in many of the areas outside of agriculture and NAMA have been attentively observing progress in those areas and, arguably, have yet to move into full negotiating mode. On top of these difficult dynamics, political developments in many of the key players also make the goal of an early completion of the Round seem difficult. The EU presidency will rotate to France in July, and US presidential elections will be held at the end of the year.

For all of these reasons, it is difficult at this juncture to anticipate future developments. If a Ministerial Meeting can be held before August and agreement reached on modalities, this could provide a much-needed kick-start to the negotiations and perhaps lead to conclusion within the next year or so. Yet there are few signs that this is imminent. Some believe that it may prove necessary to wrap up the Round as soon as possible, even at the cost of accepting a reduced level of ambition (less deep cuts, more flexibilities for developing countries, fewer new disciplines). Another possibility could be either the termination of the Round, or its suspension for a significant period of time in order to allow WTO members to recover from current “negotiations fatigue”. Still another is a “Tokyo Round”-type outcome, where some sub-set of WTO members agrees on new rules and disciplines, but not all WTO members sign on to them.

II. Specific negotiations in the Doha Round framework

(A) Market access negotiations affecting seafood

(1) Tariffs affecting international trade in fish and fish products

In developed countries, tariffs on fish and fish products vary significantly from country to country and according to fish product. In the OECD countries as a whole, about 68 percent of fish products are subject to relatively low tariffs of from 0 to 5 percent ad valorem, with just 3 percent of products subject to “peak” tariffs of more than 15 percent ad valorem. The European Union and Korea have the highest duties and the highest occurrence of tariff peaks. The table below shows average tariff rates by type of seafood in developed countries.

Table 2
Average Tariff Rates (Ad Valorem Percent) by Type of Seafood (Developed Countries)

Type of Seafood	EU	Japan	USA	Korea	Canada
Raw Fish	10.3	4.3	0.6	15.3	0.6
Intermediate Seafood Products	4.0	2.0	1.0	33.0	3.0
Processed Seafood	16.3	9.0	3.3	20.0	2.6

Source: ICTSD at page 27

Developing country tariffs on fish and fish products are generally higher than those in the developed world, with significant tariff escalation. Raw fish tariffs average 19.4 percent; intermediate fish products attract average duties of 22 percent; and, processed seafood imports typically attract tariffs of 23.8 percent on average. Tariff structures vary importantly among countries. In India, for example, the highest level of duty is applied on intermediate fish products, with lower duties on imports of processed seafood. Some countries apply the same tariffs across all ranges of seafood imports irrespective of the level of processing. In Mexico, tariffs are on average lower for intermediate fish products than they are for raw fish. The table which follows summarizes average tariff rates for seafood products in key developing countries.

Table 3
Average Tariff Rates (Ad Valorem Percent) by Type of Seafood in Developing Countries

Type of Seafood	China	India	Thailand	Mexico	Brazil	Chile	Argentina	Kenya	Malaysia
Raw Fish	20.8	15.0	60.0	28.6	12.0	9.0	11.2	15.0	3.2
Inter-mediate Products	22.0	45.0	60.0	8.0	11.0	9.0	10.0	15.0	18.0
Processed Seafood	25.4	35.0	60.0	25.3	15.7	9.0	15.7	15.0	12.7

Source: ICTSD at page 29

(2) Non-Agricultural Market Access (NAMA) negotiations

The Doha Round negotiations with the greatest potential to affect international trade in seafood are those being conducted under the Non-Agricultural Market Access (NAMA) framework. If the negotiations are ultimately successful, the NAMA negotiations should lead to reasonably large reductions in import duties on seafood in most countries – and in some cases, to the elimination of existing tariffs. Tariffs of developed and developing countries will be subjected to different mathematical formulae to effect general cuts in tariff levels.

Beef and other farm animals are considered agricultural products, so why are fish and other kinds of seafood considered to be “non-agricultural”? It all stems from the Agreement on Agriculture which sets its product coverage in Annex 1. This definition considers as agricultural products those classifiable in Harmonised System (HS) Chapters 01-24 “less fish and fish products” and plus some other HS headings. Everything else is “non-agricultural”. This distinction is an artificial one and there are some things that do not make too much sense in the real world (for example, whales are considered agricultural products).

Initially, there were two main problems with this definition in the Doha negotiations:

1. There was no precise definition of what is considered “fish and fish products” and there were several divergences in the Uruguay Round schedules of a number of WTO Members.
2. The product coverage is defined in terms of HS 1992, and there had been several changes accruing from the subsequent versions of the HS system.

Since consistency and predictability were considered important (i.e. everybody doing the same in their schedules this time around), the issue was discussed at length in NAMA. We now have a more or less a clear picture of what are going to be considered agricultural and non-agricultural in terms of the HS 2002 classification system.

An express definition of this differentiation can be found in Paragraph 2 and in Annex 1 of the draft NAMA modalities (last report by the Chair is in TN/MA/W/103/Rev.1). The term "fish and fish products" are for the first time defined therein.

(3) How would the negotiation work? What are the key stages?

There are really three distinct phases in an industrial tariff negotiation under WTO auspices. In the first phase, the Members need to set the "modalities" for the negotiations. Modalities are the basic rules for the negotiations and, in a tariff negotiation are addressed to issues like (a) will tariffs be subjected to a mathematical formula-based reduction? ; (b) if so, what formula will be used?; (c) how will the agreed formula operate differently for developed, developing and least-developed countries?; (d) what, if any, exceptions to the rules will be permitted?; and, over what time frame will reductions and/or tariff elimination take place?

In the second phase of the negotiation, individual countries determine what they actually intend to do with the agreed modalities (e.g., tariffs for X goods will be subject to the formula; tariffs for Y goods will be cut by the agreed lesser amount, and tariffs on the following products will not be cut at all). This second phase notification of intentions sets off the real bargaining phase where individual members meeting in bilateral sessions will try to come to bilateral agreements on how NAMA tariffs should be cut.

In the third phase of the talks, individual schedules are established and notified and last-minute horse-trading takes place as individual countries try to get the best possible deal for its constituents. By a date certain, the schedules must be approved, multilateralized and certified as correct. These approved schedules of tariff concessions form the basis for the implementation phase after the Round.

As of the date on which this portion of this report is written [8 June 2008], there is still no agreement on the first phase – modalities – governing the eventual NAMA negotiations. For the Doha Round, these modalities were to have been agreed by mid-year, 2003. The Doha Round's original timetable foresaw at least 18 months' worth of work in the second and third stages after agreement on the modalities for the negotiations.

(4) What is in the most recent set of proposed modalities for NAMA?

If the negotiating modalities now on the table in the Chairman's latest draft text were to be adopted, participants in the negotiations would proceed to cut tariffs on the basis of what is called the "Swiss formula" and exceptions to the formula as defined in the modalities. The Swiss formula has been used in past WTO negotiations and, in general terms, has a harmonizing effect – meaning that it cuts high tariffs by a greater percentage than it cuts lower tariffs. In the latest draft modalities, the Swiss formula to be used is defined as:

NAMA's Swiss Formula

$$t_1 = \frac{\{a \text{ or } (x \text{ or } y \text{ or } z)\} \times t_0}{\{a \text{ or } (x \text{ or } y \text{ or } z) + t_0}$$

where:

- t_1 = final bound rate of duty
- t_0 = pre-Doha base rate of duty
- a = coefficient for developed countries (range 7 – 9)
- x = coefficient for developing countries (range 19 – 21) to be determined on sliding scale¹⁰
- y = coefficient for developing countries (range 21 – 23) to be determined on sliding scale
- z = coefficient for developing countries (range 23 – 26) without recourse to flexibilities

The initial pre-Doha base rate is the bound rate in the country's WTO schedule of concessions – not the applied rate, which for many countries would be considerably lower. For unbound tariff rates, a constant, non-linear mark-up of some percentage as yet to be agreed would be added to the applied rate in effect on 14 November 2001. Any tariff rates expressed in a non-*ad valorem* manner would be converted to *ad valorem* equivalents prior to application of the tariff-cutting formula.

As for the flexibility to be offered to developing countries in the negotiations, they would have the option of choosing the applicable formula coefficient / flexibility in shielding tariffs from cuts according to the following (from paragraph 7 of the most recent modalities):

Coefficient x (19-21) in the formula and either:

- (i) less than formula cuts for up to [12-14] percent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [12-19] percent of the total value of a Member's non-agricultural imports;
or
- (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [6-7] percent of non-agricultural national tariff lines provided they do not exceed [6-9] percent of the total value of a Member's non-agricultural imports.

¹⁰ The sliding scale that determines the coefficient to be used by developing countries is related to the flexibility they seek in shielding some percentage of their tariff lines from full formula cuts.

Coefficient y (21-23) in the formula and either:

- (i) less than formula cuts for up to [10] percent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's non-agricultural imports;

or

- (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of non-agricultural national tariff lines provided they do not exceed [5] percent of the total value of a Member's non-agricultural imports.

Coefficient z (23-26) in the formula, without recourse to flexibilities.

Certain countries also would be given greater flexibility in the application of the formula.¹¹

(5) What results would be produced by negotiations based on these modalities?

Applying the formula and its various coefficients to hypothetical rates of duty demonstrates quickly that for any given tariff rate, the higher the coefficient, the lower the cut that would result from the formula. It is also easily apparent that higher tariff rates are cut more deeply (the depth of cut) by this formula than are low tariff rates. The tables which follow give examples of how relatively high (30 percent *ad valorem*) and relatively low (5 percent *ad valorem*) tariffs would be cut in developed and developing countries, using the highest and lowest coefficients tentatively applicable to each class of countries in the current text.

Table 4 – Developed Countries' Tariff Cuts Scenarios

Pre-Doha Bound Rate of Duty (Percent Ad Valorem)	Post-Doha Bound Rate With Formula and Lowest Coefficient [7]	Depth of Cut Produced	Post-Doha Bound rate With Formula and Highest Coefficient [9]	Depth of Cut Produced
High Tariff 30 Percent Ad Valorem	5.8 %	81 percent	6.9 %	77 percent
Low Tariff 5 Percent Ad Valorem	2.9 %	42 percent	3.2 %	36 percent

¹¹ South Africa, Venezuela, countries considered as "small and vulnerable" and countries that have only recently acceded to the World Trade Organization.

Table 5 – Developing Countries’ Tariff Cuts Scenarios*

Pre-Doha Bound Rate of Duty (Percent Ad Valorem)	Post-Doha Bound Rate With Formula and Lowest Coefficient [19]	Depth of Cut Produced	Post-Doha Bound rate With Formula and Highest Coefficient [26]	Depth of Cut Produced
High Tariff 30 Percent Ad Valorem	11.6 %	61 percent	13.9 %	54 percent
Low Tariff 5 Percent Ad Valorem	4.0 %	20 percent	4.2 %	16 percent

*Use of coefficient of 19 implies flexibility to apply cuts of less than half the formula cut rate on up to 14 percent of NAMA tariff lines. Use of the highest coefficient of 26 gives no flexibility on applicability of the formula.

The above tables can be used to provide a rough hypothetical estimate of how individual tariffs in developed and developing countries might be reduced; however, it must be remembered that no country – including those in the developed world – is likely to follow a strict formula approach without exception. There will be many cases where a country will seek to cut less on one product and agree to compensate with a greater than formula cut on another (less sensitive) product. It is also the case that, notwithstanding the proposed formula and modalities, there is nothing in the modalities that would prevent any individual WTO Member from entering into negotiations with another WTO Member of the reduction or elimination of a tariff through a purely bilateral process (where the result of the negotiation would be applicable on a most-favoured-nation (MFN) basis).

WTO Members designated as Least-Developed Countries are exempt from tariff reductions in the Doha Round but are expected to contribute nonetheless by substantially increasing their level of tariff binding commitments.

(6) Other aspects to the NAMA negotiations

In addition to the formula and flexibility modalities discussed above, there are other aspects to the NAMA process that could have implications for the seafood industry in Australia.

Some countries involved in the Doha Round have proposed sectoral market access initiatives. In the Uruguay Round, for example, there were a number of sectors where a critical mass of countries agreed to completely eliminate tariffs in what were referred to as “zero-for-zero” plurilateral agreements. In the Doha Round, sectoral initiatives similar to the zero-for-zero

approach have been proposed for fourteen sectors, including fish and fish products. While it is too early to predict whether any of these sectoral initiatives can succeed, the latest Chairman's text does incorporate a timetable to be followed by those countries participating in sectoral initiatives. The suggested timetable would have countries participating in sectoral initiatives incorporating the outcomes of those initiatives in their draft schedules not later than three months after the agreement on general NAMA modalities.

Sectoral proposals on fish market access have been advanced in NAMA by the United States, Canada, Iceland, New Zealand, Norway, Singapore and Thailand. The EU has not supported these proposals, arguing instead that the focus should be on gaining agreement to the general approach to reducing NAMA tariffs. Japan, Korea and Chinese Taipei have actively opposed efforts to liberalize fish trade on a sectoral basis.

The NAMA process is also concerned with the reduction and/or elimination of non-tariff barriers affecting market access for covered products. A number of so-called "text-based" proposals for addressing non-tariff barriers are annexed to the draft modalities. While most of these proposals are very specific to certain sectors, at least one – the proposed "Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers" – could be applied to non-tariff barriers affecting trade in seafood products. The proposed procedures, which would be applied in the context of relevant WTO Committees¹², would allow one country to ask another to reduce or eliminate a measure considered to be a non-tariff barrier, with resolution of the issue facilitated by the Committee.

Notwithstanding the above proposal, there is nothing in the modalities that would prevent any individual WTO Member from entering into negotiations with another WTO Member of the reduction or elimination of a non-tariff barrier through a purely bilateral process (where the result of the negotiation would be applicable on a most-favoured-nation (MFN) basis).

(B) Other negotiations and their potential impact on seafood

There are three parts to the "rules" negotiations: anti-dumping; subsidies and countervailing measures; and fisheries subsidies. The third of these has the most direct relevance to trade in seafood products, and thus deserves close examination.

(1) Fisheries subsidies

Concerns about over-fishing and the collapse or decline of fish stocks have prompted discussion and action at the WTO. Initially these issues were dealt with in the Committee on Trade and Environment, but since 2001 negotiations on fisheries subsidies have formed part of

¹² For example, a non-tariff barrier relating to a product standard would be addressed in the Committee on Technical Barriers to Trade. Exempt from the proposed procedures are any alleged non-tariff barriers having to do with (1) the Agreement on Agriculture, (2) the Agreement on Subsidies and Countervailing Measures, (3) the Antidumping Agreement, and (4) the Agreement on Safeguards.

the mandate of the WTO Negotiating Group on Rules. Paragraph 28 of the Doha Declaration specifies that, in the negotiations, “participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.”

This mandate was clarified at the Hong Kong Ministerial meeting in 2005. Members accepted that specific disciplines applicable to particularly damaging fisheries subsidies are desirable, and that certain special and differential treatment is needed for developing countries involved in fishing.¹³ This was a concrete and positive step for two main groups in the negotiations: (1) WTO members who believe that conservation goals require special subsidies disciplines for fisheries, including the European Union and the so-called “Friends of the Fish” group, which includes Australia and the United States¹⁴; and (2) developing countries keen to ensure that any enhanced subsidies disciplines for fisheries do not jeopardize the fisheries access fees and development assistance that they receive from developed fishing nations or the subsidies that they provide to develop small-scale and artisanal fishing sectors. The Hong Kong conference thus effectively rejected the position of another group of WTO members, in particular Japan and Korea, who expressed doubts as to whether there was really a need for special subsidies disciplines—distinct from those that already exist under the WTO *Agreement on Subsidies and Countervailing Measures*—for fisheries.¹⁵

In November 2007 the Chairman of the WTO Negotiating Group on Rules, Uruguayan Ambassador Guillermo Valles Galmés circulated a draft text proposing various modifications to existing WTO disciplines on the use of subsidies, anti-dumping and countervailing duty measures. The text included a proposed new Annex VIII, with special disciplines applicable to fisheries subsidies. Although many doubts remain as to whether the text could be adopted as it stands, the current draft imposes a fairly robust set of disciplines on subsidies related to fisheries, and has been heralded as pro-conservation.

The main features of the text are that it adopts a “traffic light” approach to specified fisheries subsidies granted or financed by governments in WTO members. In other words, some subsidies, considered the most harmful, are prohibited outright (“red light”), some are

¹³In paragraph 9 of Annex D to the Hong Kong Ministerial Declaration, WTO members:

recall our commitment at Doha to enhancing the mutual supportiveness of trade and environment, *note* that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and *call on* Participants promptly to undertake further detailed work to, *inter alia*, establish the nature and extent of those disciplines, including transparency and enforceability. Appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns;

¹⁴Also part of this group are Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines.

¹⁵Japan and South Korea, in particular, maintained that the causal link between subsidies and over fishing is not proven and that, therefore, fisheries subsidies should not be subject to distinct treatment within the WTO. Rather, fisheries subsidies should be dealt with under the general subsidies disciplines, as enhanced by the Doha Round negotiations, and fisheries management issues should be dealt with in fora other than the WTO.

actionable, meaning that they are illegal if they are shown to have specified adverse effects (“amber light”) and some are permitted (“green light”). Thus, the agreement has a “bottom-up” structure, defining what is not allowed, rather than the “top-down” approach, prohibiting all fisheries subsidies except for listed exceptions, that was favoured by the Friends of Fish group of countries. Although Japan, South Korea and Taiwan favoured the bottom-up approach, the draft text goes much further than these countries would have liked in terms of what it prohibits/subjects to disciplines. For example, the draft text would prohibit not only the types of subsidies that are directly linked to fishing overcapacity, such as subsidies for the construction of fishing vessels, or for their operation (e.g. fuel subsidies), but also indirect subsidies such as port infrastructure subsidies, where the infrastructure in question is used predominantly for fishing activities.

The draft builds in a number of exceptions and flexibilities for developing countries, although these are subject to compliance with a number of fairly detailed conditions. The draft Annex VIII also imposes obligations on any member that grants any fisheries subsidy to maintain an appropriate, internationally-recognized fisheries management program to prevent over fishing. In addition, the Annex requires subsidizing states to notify their fisheries subsidies to the WTO. Failure to do so results in the application of a legal presumption that will make it more difficult for the State granting such subsidies to defend them if they are subsequently challenged in dispute settlement proceedings. Notably, the proposed subsidies disciplines do not apply to inland fisheries or aquaculture.

More specifically, the main elements of the proposal contained in the Annex are:

(a) *Red, Green and Amber Light Subsidies*

Red Light Subsidies. In addition to the existing WTO prohibitions on the granting of export-contingent or import-substitution subsidies, the following types of specific subsidies are prohibited outright, except when they are provided as disaster-relief:

- (a) on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels or service vessels, including subsidies to boat building or shipbuilding facilities for these purposes;
- (b) on transfer of fishing or service vessels to third countries, including through the creation of joint enterprises with third country partners;
- (c) on operating costs of fishing or service vessels (including licence fees or similar charges, fuel, ice, bait, personnel, social charges, insurance, gear, and at-sea support); or of landing, handling or in- or near-port processing activities for products of marine wild capture fishing; or subsidies to cover operating losses of such vessels or activities;
- (d) in respect of port infrastructure or other physical port facilities exclusively or predominantly for activities related to marine wild capture fishing (for example, fish

landing facilities, fish storage facilities, and in- or near-port fish processing facilities);

- (e) income support for natural or legal persons engaged in marine wild capture fishing;
- (f) price support for products of marine wild capture fishing;
- (g) arising from the further transfer, by a payer member government, of access rights that it has acquired from another member government to fisheries within the jurisdiction of such other member;¹⁶
- (h) that benefit any vessel engaged in illegal, unreported or unregulated fishing; and
- (i) any other specific subsidy that confers a benefit on any fishing vessel or fishing activity affecting fish stocks that are in an unequivocally over-fished condition.

Green Light Subsidies. Provided that a WTO member operates a fisheries management system regulating marine wild capture fishing within its jurisdiction, designed to prevent over-fishing and based on internationally-recognized best practices for fisheries management and conservation, then that member may grant the following types of subsidies:

- (a) subsidies exclusively for improving fishing or service vessel and crew safety, provided that the improvements are undertaken to comply with safety standards and that the subsidies do not involve new vessel construction or vessel acquisition, do not increase the wild capture fishing capacity of any fishing or service vessel, and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn;
- (b) subsidies exclusively for: (1) the adoption of gear for selective fishing techniques; (2) the adoption of other techniques aimed at reducing the environmental impact of marine wild capture fishing; (3) compliance with fisheries management regimes aimed at sustainable use and conservation (e.g., devices for Vessel Monitoring Systems); provided that the subsidies do not give rise to any increase in the marine wild capture fishing capacity of any fishing or service vessel, , and do not have the effect of maintaining in operation any such vessel that otherwise would be withdrawn;
- (c) subsidies to cover personnel costs: (1) exclusively for re-education, retraining or redeployment of fish workers into occupations unrelated to fishing; and (2) subsidies exclusively for early retirement or permanent cessation of employment of fish workers as a result of government policies to reduce fishing capacity or effort; and

¹⁶This does not cover government-to-government payments for access to marine fisheries, only the onward transfer of access rights by a government to fishers.

- (d) subsidies for vessel decommissioning or capacity reduction programmes, provided that (1) the vessels subject to such programmes are scrapped or otherwise permanently and effectively prevented from being used for fishing anywhere in the world; (2) the fish harvesting rights associated with such vessels are permanently revoked and may not be reassigned; (3) the owners of such vessels, and the holders of such fish harvesting rights, are required to relinquish any claim associated with such vessels and harvesting rights for any present or future harvesting rights in such fisheries; and (4) the fisheries management system in place includes management control measures and enforcement mechanisms designed to prevent over-fishing in the targeted fishery.

Amber Light Subsidies. This category embraces all other types of subsidies—but they are only deemed problematic when they have defined negative effects. Such subsidies are “actionable” when they cause depletion of or harm to, or create overcapacity in respect of: (a) straddling or highly migratory fish stocks whose range extends into the Exclusive Economic Zone (EEZ) of another member; or (b) stocks in which another member has identifiable fishing interests, including through user-specific quota allocations to individuals and groups under limited access privileges and other exclusive quota programmes.

(b) Special and Differential Treatment for Developing Countries.

A number of provisions apply only to developing countries, and exempt them from certain of the proposed disciplines outlined above. Least-developed country members (“LDC”s) are exempt from the disciplines on prohibited (red light) subsidies. For other developing countries:

- (a) prohibited subsidies disciplines do not apply when such subsidies relate exclusively to fishing performed within the territorial waters of the member with non-mechanized net-retrieval, provided that the activities are carried out on their own behalf by fish workers; the catch is consumed principally by the fish workers and their families; the activities do not go beyond a small profit trade; and there is no major employer-employee relationship in the activities carried out;
- (b) prohibited subsidies disciplines in respect of port infrastructure or other physical port facilities and in respect of income and price supports do not apply;
- (c) subsidies conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels and subsidies conferred on operating costs of fishing, shall not be prohibited for developing countries provided that they are used exclusively for vessels not greater than 10 meters or 34 feet in length overall, or undecked vessels of any length;
- (d) for other types of vessels, subsidies conferred on the acquisition, construction, repair, renewal, renovation, modernization, or any other modification of fishing vessels shall not be prohibited for developing countries provided such vessels are

used exclusively within the Exclusive Economic Zones of these developing countries and provided the fished stocks are subject to prior scientific status assessment conducted in accordance with relevant international standards aimed at ensuring that the resulting capacity does not exceed a sustainable level; and that such assessment has been subject to peer review in the Food and Agriculture Organization; and

- (e) prohibited subsidies disciplines relating to the further transfer by governments to their fishing industry of access rights do not apply when these access rights concern fisheries within the EEZ of a developing country, provided that the agreement pursuant to which the rights have been acquired is made public and contains provisions designed to prevent over-fishing.

(c) Fisheries Management, Notification and Surveillance, Transition Provisions and Dispute Settlement.

The remaining sections of the proposed Annex VIII set out various provisions of a regulatory/administrative nature. Of most significance are the following:

- (a) All countries that grant any fisheries subsidies are required to maintain a fisheries management program to prevent over fishing “based on internationally-recognized best practices for fisheries management and conservation as reflected in the relevant provisions of international instruments aimed at ensuring the sustainable use and conservation of marine species”. Examples of such international instruments and appropriate disciplines are given.
- (b) The subsidies disciplines apply to the WTO member granting the subsidy, regardless of the flag of the vessel involved or the origin of the fish involved.
- (c) members that pay other members for access rights must publish the agreement and notify the WTO of its existence. In addition, those members must notify the terms on which it transfers such fishing rights on to private operators. In case of a failure to notify the terms of the latter transfer, that transfer will be presumed to give rise to a subsidy in dispute settlement and the member making the transfer will have the onus of proving that no subsidy has arisen.
- (d) Whenever a member grants a subsidy that it considers to be permitted (a green light subsidy or a subsidy that a developing country member is permitted to grant) it must notify that subsidy to the WTO before it is implemented. Failure to make such a notification will mean that, in the event of dispute settlement, the subsidy will be presumed to be prohibited and the member in question will have the onus of demonstrating that the subsidy is not prohibited.

- (e) Transitional provisions would require the notification of all existing fisheries programs that constitute prohibited subsidies within 90 days (180 days for developing countries) of the entry into force of the text, and allow members two years (four years for developing countries) to phase out such prohibited subsidies.

(d) *Reactions to the Chairman's Text*

Reaction to the text by WTO members has been mixed, and included much criticism. The extent to which economic considerations should be subordinated to conservation goals, to which subsidies disciplines can contribute to sustainable fishing practices, or to which the WTO is the appropriate international forum to tackle over fishing all remain subject to much debate. Accordingly, WTO members continue to hold differing views on the level of ambition that should be reflected in the text including, for example, whether some types of subsidies, such as port infrastructure subsidies and subsidies for operating costs should be prohibited.

Many developing countries are dissatisfied with the special and differential treatment proposed in the draft. India and Indonesia they have protested that the conditions that the draft text would impose upon them in order to be exempt from prohibitions on the giving of certain types of subsidies are too strict. They are opposed to the narrow conditions attached to the granting of subsidies for artisanal/subsistence fishing, which they argue would prevent development and modernization of their fisheries industries. They propose, for example, that developing countries should be allowed to grant subsidies for vessels of up to 24 metres in length, rather than the 10 metre limit proposed in the text. Developing countries have also expressed concerns about the difficulties of putting in place the type of comprehensive fisheries management program that seems to be required and the unduly onerous nature of the notification and transparency provisions. They are also opposed to the reversal of the burden of proof in dispute settlement, which would mean that subsidies that have not been notified would be presumed to be prohibited or actionable.

A specific group of small and vulnerable developing country economies (SVEs)¹⁷ point to their heavy reliance on fisheries for diversification, food security and livelihoods and argue that developing small island and coastal states need additional flexibilities beyond what the text currently sets out for developing countries. They maintain that "one size does not fit all", and stress that "their miniscule share of global trade and marine capture fisheries demonstrates that they do not, either individually or cumulatively, impact on over fishing and over capacity." These members consider that they should be exempt from rules applying to subsidies on operating costs, as they use such subsidies extensively. Like India and Indonesia, they contend that the category of boats eligible to receive boat-building/repair and operator subsidies should be larger, for example for boats up to 25 metres in length. Some of these SVEs have also expressed concerns about the disciplines on the transfer of rights acquired pursuant to fisheries access agreements, since for many of them such access agreements are

¹⁷Barbados, Cuba, Dominican Republic, El Salvador, Fiji, Honduras, Mauritius, Papua New Guinea, St. Vincent & the Grenadines, and Tonga.

the source of a significant proportion of government revenues. Nonetheless, these countries were successful in having the government-to-government payments made pursuant to such access agreements kept out of the scope of disciplines that would be created.

Two developed WTO members have also made written proposals to amend the November Chairman's text. Canada has proposed adding an across-the-board "de minimus" exception, that would allow a member to provide a certain amount of support to fishing activities within waters subject to its national jurisdiction, as long as the value of programs does not exceed a set (not yet defined) percentage of the landed value of fish harvested in these waters. This proposal is reminiscent of one made earlier in the negotiations by Japan, Korea and Taiwan, which was not well-received by other members, although Canada has not identified the specific level at which the de minimus exception should be set. Norway has proposed strengthening the requirements to have a fisheries management program in place and clarifying that any such program should include stock-specific elements. In addition to the "over-arching" obligation to operate a fisheries management system that creates the legal and institutional *framework* to ensure the long-term conservation and sustainable use of fisheries resources, Norway proposes to require members to complement that framework with stock-specific management plans for each fishery that is or will be subsidized, along with other measures that ensure that non-stock-specific subsidies do not result in over-fishing.

Questions have also been raised about actionable subsidies with respect to migratory species, the ambiguity of certain phrases contained in the draft (for example, "small profit trade" and "fish stocks that are in an unequivocally over-fished condition"), and whether the references to international instruments, practices and organizations are the most appropriate ones. Although many members expected the Chairman to issue a revised text in May 2008 taking into account many of the reactions to his first draft, he declined to do so. Instead, he simply issued a compilation of all proposals that have been made since the inception of the negotiations.

(2) Trade and environment issues

The various elements of the Doha Round negotiations on trade and environment all have potential relevance to trade in seafood products. The negotiations on creating new disciplines for fisheries subsidies originally fell within the mandate of this negotiating group, but were later moved into the "Rules" group, as discussed above. Three subjects remain with the negotiating group on trade and environment. The first is clarifying the relationship between multilateral environmental agreements (MEAs) and WTO obligations. Of the more than 250 international treaties for the protection of the environment currently in force, around 20 specifically provide for trade-related measures that, if taken, have the potential to create a conflict with WTO rules. This might occur if, for example, a country that had signed onto a MEA to protect endangered species adopted, in conformity with the MEA, a ban on trade in such species, or a ban on landing or transshipment of such species. Another potential conflict could arise when a country is party to an MEA that allows or requires parties to prohibit trade in certain products with countries that do not belong to the MEA (because, for example, they have not signed up to protect the species or natural resource in question), but allows trade in the relevant products among the parties to the MEA. If all relevant countries are WTO members, then prohibiting

trade with one country while allowing it with another would seem to be a violation of the principle of MFN—the requirement to treat all WTO trading partners equally. An example of the types of conflicts that can arise is the pair of disputes between Chile and the EC relating to swordfish, which is briefly summarized in Annex [1].

To date, much of the work of the negotiating group on trade and environment on this issue has been devoted to cataloguing MEAs and trade-related measures that may be taken pursuant to them, and to identifying potential areas of conflict. Among the MEAs with trade provisions that have been identified are the International Convention for the Conservation of Atlantic Tunas, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of Antarctic Marine Living Resources, the Convention on Biological Diversity and the UN Fish Stocks Agreement. WTO members have also engaged in the sharing of information regarding their own experiences in implementing obligations under these MEAs, and how this has been accomplished in relation to their WTO obligations. Many differences still exist between members as to the appropriate scope and desired form of any outcome from these negotiations. Members such as the EC and Switzerland, which would like to have clear and binding rules, and provisions that would allow for deference to MEAs in WTO dispute settlement, have not obtained widespread support for their views. There is, however, relatively widespread support for adopting rules on coordination and information sharing, and capacity-building assistance for developing countries.

A second, and related element of the trade and environment negotiations is the issue of closer cooperation between MEA Secretariats and WTO Committees. The objective is to institutionalize such links—many of which exist to a greater or lesser extent already—so as to ensure that trade and environment rules regimes develop coherently. Cooperation encompasses matters such as include information sessions held by the WTO Trade and Environment Committee with MEA Secretariats; exchange of documents; collaboration between the WTO and MEA Secretariats in providing technical assistance to developing countries on trade and the environment; as well as the granting of observer status to MEA Secretariats in WTO meetings. Discussions on these issues have progressed steadily on the basis of a number of proposals from members.

The third and final element of the negotiations on trade and environment relates to the treatment of environmentally-friendly goods and services. The objective of this part of the negotiations is to agree on the reduction or elimination of tariff and non-tariff barriers on environmental goods and services and, thereby, to create a “triple win” situation for trade, the environment and development. To date, however, there has been significant disagreement as to how this should be accomplished, the scope of eligible goods and services, and whether lists of eligible goods and services should be product- or service-based, or rather project-based. Members have made a number of different proposals in terms of the approach to be taken as well as the specific goods and services to be included, but as yet there is not much convergence among different positions. One proposal of note was made by the United States, which suggested that turtle excluder devices for fishing nets (“TEDs”) should be included in the list of environmental goods to be given duty-free treatment.

(C) The potential for alternative trade barriers

(1) Potential trade disputes

Although it is currently extremely difficult to predict when or how the Doha Round will end, it will do so eventually, whether successfully or otherwise. Turning first to the scenario in which the negotiations are successful, a few comments can be made. As often occurs when stronger rules are put in place, countries come up with new ways of achieving specific trade objectives without breaking those rules. Thus, over the years of negotiating rounds, as tariffs were cut, protectionist-minded countries turned to other means, such as informal agreements (such as the “voluntary export restraints” that, following pressure from its trading partners, Japan agreed to apply in the 1980s), along with non-tariff and behind-the-border measures. Sceptics would, for example, attribute the significant growth in sanitary and phytosanitary measures (quarantine requirements etc.) to lower obstacles at the border (tariffs) rather than to better science.

To the extent that the Doha Round is successfully concluded, and produces a comprehensive package of robust new disciplines, it should result in genuine liberalization across a wide range of areas and generate increased trade flows. Yet it is also to be expected that alternate ways of maintaining at least some barriers to trade will emerge. We would, for example, think an increase in the use and scope of sanitary and phytosanitary measures to be fairly likely. Although such measures could, particularly if they are not based on science or on international standards, be vulnerable to challenge in dispute settlement, this is not always an ideal solution nor one that is available to all traders (who must persuade their government to take action). Furthermore, creation of the WTO regime and the potential to argue that measures not based on international standards are not permissible under WTO rules has had the unintended effect of paralysing the adoption of international standards in other international organizations such as the CODEX ALIMENTARIUS Commission, dedicated to food safety. Another potential consequence of a successful Doha Round might be increased reliance on trade-related intellectual property rights and/or technical barriers to trade to impede trade in goods. The EC for example, has already had restrictions on trade in two seafood products, scallops and sardines, challenged in WTO dispute settlement. Both of the products are protected by geographical indications within the EC, as are certain other fish products including anchovies, carp and salmon. Yet another possibility is the increased use of “legal” measures to restrict “unfair” trade, such as anti-dumping and countervailing duties, although the use of these types of measures does seem to increase inverse proportion to the strength of the global economy, so economic indicators—rather than the outcome of the Doha Round—may be a more accurate gauge of the likely future use of these sorts of measures.

Regardless of the outcome of the Doha Round, we expect increased use of measures aimed at, or relating to, the protection of the environment that will impact trade, including trade in seafood. “Eco-labelling” rules are one example. Another is the use of tax and tariff measures to “level the playing field”. The EC, for example, has already mooted the idea of applying discriminatory

tariffs or higher taxes on goods imported from countries that do not subscribe to the Kyoto Protocol to the United Nations Framework Convention on Climate Change. The rationale is that private traders would benefit from the fact that their governments do not require them to pay for or limit carbon emissions in the same way that the governments of countries which have signed onto the Kyoto Protocol do, and that it is necessary to offset this “unfair” advantage and avoid creating flight of business to such unregulated countries.

Predictions as to what might happen in the event of the failure of the Doha Round are equally difficult to make. Among the more dire forecasts are that there will be a crisis of confidence in the multilateral trading system, accompanied by a rise in regionalism and in trade protectionism. At the opposite extreme are some who posit simply the continuation of the status quo. Many suggest that failed negotiations will lead to increased litigation. It is, in this regard, worth a brief look at the WTO dispute settlement system, particularly as it has witnessed a number of disputes specifically related to fish and fish products.

The WTO’s mechanism for resolving trade dispute is widely viewed as a cornerstone of the multilateral trading system. Access to the WTO’s dispute settlement system is open to all WTO members – indeed they are required to use this channel when bringing a WTO case against another WTO member and cannot, for example, have recourse to domestic courts or a mechanism under a regional trade agreement for this purpose. In addition, every WTO member is required to submit to the jurisdiction of the WTO adjudication process if a case is brought against it. Only States—WTO members, not private entities—can participate as parties in a dispute and, unlike many international dispute settlement systems, it is not possible for a party to block the process from going forward by withholding consent or refusing to participate.

The system is used extensively by WTO members. Between 1995 and 30 May 2008, 376 complaints were brought to the WTO. Many of these were resolved during the mandatory first stage of proceedings—consultations between the members involved. Where this was not possible, the cases were adjudicated, in the first instance by a panel of three individuals. Panel decisions may be, and frequently have been, appealed to the WTO’s standing Appellate Body. To date, 145 panel decisions and 85 Appellate Body decisions have been issued. WTO dispute settlement does not provide for the payment of damages or fines. Rather, a member found to have acted in violation of the agreements is required to cease its inconsistent action, for example by withdrawing or modifying the act or conduct found to be in violation. In the event that it does not do so, however, the only sanction which may follow is the imposition by the “winning” party of trade sanctions on the “losing” party. Such sanctions typically take the form of the imposition of higher tariffs on certain goods imported from the “losing party”—but it should be borne in mind that recourse to such sanctions is rare and must be authorized by the WTO.

Many commentators have expressed the view that the WTO’s “automatic” dispute settlement system functions more efficiently than its political arm, where decisions are taken by consensus. This has prompted speculation that, if the political consensus necessary to agree a conclusion to the Doha Round cannot be achieved, frustrated WTO members would make even more use of the WTO’s dispute settlement system than they currently do. These observers reason that if

the negotiations fail, government resources currently used for negotiating purposes could instead be channelled into litigation. Having failed to persuade their trading partners to agree new rules, some WTO members may instead seek to achieve market access for their goods and services through litigation, and to have panels and the Appellate Body interpret the existing rules in a way that favours outcomes that could not be achieved through negotiation – in effect a form of “judicial rule-making”.

Since the WTO came into existence several disputes have been brought that relate specifically relating to fish and fisheries products.¹⁸ The disputes have involved a variety of different products, WTO members, and alleged violations of different WTO obligations. Disputes have challenged measures such as:

1. requirements for the labelling of imported fish products;
2. quarantine requirements imposed on imported seafood;
3. an import ban on imported seafood from countries deemed to have insufficient regulatory rules regarding the harvesting of such products;
4. anti-dumping, countervailing duty and safeguard measures imposed on imported fish and fish products; and
5. a prohibition on the landing and transshipment of fish.

A table identifying each dispute, the parties involved, and the outcome, is set out in Appendix 3.

(2) Anti-Dumping

The negotiations on anti-dumping disciplines also warrant brief mention, in particular because seafood products—in particular salmon and shrimp—have been the target of anti-dumping duties in recent years, although the countries whose exporters were subjected to the anti-dumping duties have been fairly successful in challenging them within the WTO (see Appendix 3). The objective of these negotiations is to clarify and improve disciplines while preserving the basic concepts and principles of the existing *Anti-Dumping Agreement*. This is delicate task because the existing agreement already represents a hard-fought compromise. This has led to deep divisions in the negotiations between, on the one hand, countries that have tended to have fairly frequent recourse to anti-dumping duties and wish to preserve their right to do so in order to combat “unfair” trading practices (most prominently the United States) and, on the other hand, countries whose exports are often subjected to such anti-dumping duties and who wish to impose stricter rules on the conditions that must be satisfied before anti-dumping duties may legitimately be applied (such as Japan, Korea and China).

Without going too far into the highly detailed and technical issues involved in this part of the negotiations, the issue of “zeroing” well illustrates the difficulties. “Zeroing” is a methodology

¹⁸ In addition, other disputes with a broader scope (not linked to specific products) may well also have implications for trade in fisheries products, such as disputes relating to ship-building subsidies (three disputes between Korea and the EC) or geographical indications (a dispute brought by the United States against the EC) or a harbour maintenance tax (a dispute initiated by the EC against the US).

used, in particular by the United States Department of Commerce, for calculating dumping margins in anti-dumping investigations. It involves discarding (treating as zero) negative dumping margins, instead counting only positive margins (where normal value exceeds the export price). This has the effect of inflating the overall dumping margin and, often, leading to the application of higher duties. However the *Anti-Dumping Agreements* silent on the issue of zeroing, containing only general rules requiring a fair comparison of normal value and export prices. The United States considers that zeroing is consistent with the *Anti-Dumping Agreement*, but multiple WTO challenges to the practice of zeroing have led to rulings that zeroing is not consistent with relevant rules. Now, in the negotiations, the United States wants to clarify that zeroing is *permissible*, but most other countries want to clarify that is *prohibited*. The draft text issued by the Chairman late last year proposed that zeroing would be prohibited in several situations, but permitted in one. That proposal has been subject to severe criticism by many members, and there does not seem to be much scope for middle ground to reach a compromise. Indeed, it is the view of many observers that this “zeroing” stalemate is a good example of why horizontal trade-offs in the negotiations will be necessary—because members on both sides of the issue simply will not budge unless other negotiating areas that are priorities for them are brought into play.

III. Bilateral and regional trade negotiations involving Australia

(A) Overview

Australia has existing free trade agreements (FTAs) in place with New Zealand, Singapore, the United States and Thailand. Negotiations are underway to establish FTAs with China, the Gulf Cooperation Council, Japan and Malaysia and, together with CER partner New Zealand, with the ASEAN group overall. Negotiations on an FTA between Australia and Chile were completed on 26 May 2008, with the agreement expected to enter into force on 1 January 2009.

A joint non-government feasibility study on an FTA with the Republic of Korea (ROK) has been completed and will contribute to discussions with Korea on next steps. Proposed FTAs are under study with Indonesia and India.

In September 2007, APEC Economic Leaders endorsed a report containing some fifty agreed actions aimed at strengthening economic relations in the Asia-Pacific region. This report mandates an examination in APEC of the options and prospects for a Free Trade Area of the Asia-Pacific (FTAAP). This examination is now under way.

(B) Existing FTAs involving Australia

(1) Australia – New Zealand CER

Australia's oldest Free Trade Agreement, the Australia- New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), turned 25 on 28 March 2008. The FTA completely eliminated duties on goods trade between Australia and New Zealand. It remains a living, vibrant document and continues to evolve in response to the needs of business and the expanding economic and trade policy requirements of both countries. On 1 January 2007 new ANZCERTA rules of origin came into force based on a change of tariff classification approach similar to that adopted by Australia in other recent FTAs such as AUSFTA and TAFTA. Australia and New Zealand are working to conclude an ANZCERTA Investment Protocol. Its objective is to foster trans-Tasman investment flows and strengthen further the economic relationship between the two countries. The ANZCERTA Services Protocol has just been reviewed and its outcomes will be announced shortly. Two-way trans-Tasman trade has increased at an average annual rate of eight percent since ANZCERTA was signed in 1983.

The next CER Ministerial meeting to be held in Sydney on 26 July 2008 will recognise the achievements flowing from ANZCERTA while pointing to practical measures to deepen further the comprehensive economic links developed over ANZCERTA's 25-year life.

(2) Singapore- Australia Free Trade Agreement (SAFTA)

Like CER, Australia's FTA with Singapore is a comprehensive, WTO-plus¹⁹ agreement that incorporates the full range of features normally associated with a high quality bilateral free trade agreement. In addition to normal trade in goods provisions, SAFTA takes a top-down (NAFTA-style) approach to services trade liberalisation and includes chapters on investment, competition policy, government procurement and customs cooperation. Both countries made use of the agreement to provide better than GATS treatment of movement of natural persons (mode 4) and Singapore agreed to recognize Australian law schools as providing an education sufficient to permit graduates to practice local law in Singapore. SAFTA is a living agreement where periodic negotiations between the Parties can lead to extended and special trading benefits. For example, at the first review, it was agreed that certified exports of flowers from Singapore could enter Australia without further testing.

In the SAFTA, both countries agreed to the complete elimination of customs duties on imports of goods originating from the other as of the entry into force of the FTA.

(3) Australia – United States Free Trade Agreement (AUSFTA)

Australia's most comprehensive FTA is the agreement in force with the United States. The Agreement entered into force on 1 January 2005. The agreement has many WTO-Plus features, including chapters on investment, government procurement, competition policy and modernized provisions protecting intellectual property rights. It adopts the negative list approach to liberalization of services trade and introduced a large number of trade-facilitating provisions to cut border clearance times and costs. A very large percentage (over 2/3 of the total) of bilateral trade was liberalized completely on day one of the agreement's implementation.

U.S. import duties on the full range of Australian seafood exports were eliminated upon entry into force of the AUSFTA, including the very significant elimination of the American 35 percent import duty on canned tuna. In addition to tariff elimination, the seafood industry may benefit importantly from the AUSFTA's incorporation of a bilateral mechanism designed to resolve issues stemming from U.S. or Australian application of sanitary and phytosanitary measures (quarantine).

(4) Thailand – Australia Free Trade Agreement (TAFTA)

The FTA with Thailand differs to the FTA with Singapore. The agreement includes built-in further negotiations aimed at eventual enhancement of the liberalisation provided. That said,

¹⁹ A trade agreement is referred to as "WTO-Plus" when it (a) contains provisions on trade-related questions that are not currently addressed in the WTO framework, such as foreign direct investment or competition policy, and/or (b) goes significantly beyond WTO liberalization in areas that are within the framework of the WTO system, for example, when the "negative list" approach is used to achieve greater liberalization in trade in services than is possible with the WTO's "positive list" approach.

TAFTA substantially liberalised trade in a number of important sectors and the agreement contains innovative provisions on mode 4 trade. Thailand has made it much easier for Australian companies to obtain residency permits for their officials and both countries have provided for GATS-plus periods of residency under the FTA. One feature of the FTA is Australia's agreement to admit under mode 4 unlimited numbers of Thai Chefs.

In TAFTA, both Australia and Thailand agreed to the phased elimination of customs duties on imports of goods according to a schedule found in Annex 2 of the FTA. Only 4% of Thailand's tariff lines were duty-free in 2003 and only 72% of lines had bound tariff rates.²⁰ At entry into force, a further 45% of all Thai tariff lines on Australian goods were free of duty, which represented 79% of its 2002-2004 imports from Australia. Duties in place after entry into force will be eliminated either through progressive reduction or immediate zeroing after being kept constant for a period. By 2015, an additional 50% of tariff lines, or 20% of 2002-04 imports, will be liberalised. All tariff lines will be duty-free for products of Australian origin by 2025. The majority of products to be liberalised in 2015 are textiles, while the remaining products subject to tariff elimination in 2020 and 2025 are agricultural products.

For Australian seafood exports the TAFTA provided for the elimination of nearly all Thai tariffs on imports from Australia by 2009. Longer phase-out periods for duty elimination apply in the case of sharks' fins (2010) and shrimps/prawns and mackerel (2015). In the case of Thai exports to the Australian market, Australia agreed to reduce immediately its tariff on canned tuna to 2.5 percent for goods of Thai origin, and to eliminate the tariff altogether by 2007.

(C) FTAs under negotiation

(1) Australia-China FTA

The Prime Minister and Chinese Premier Wen Jiabao agreed to "unfreeze" the Australia-China FTA negotiations, which have progressed ten rounds to October 2007, in their meeting in Beijing in April 2008. Both countries have renewed commitment to ensuring that the FTA will be comprehensive, mutually-beneficial and balanced. The Australian Trade Minister's subsequent in-depth discussions with Chinese Commerce Minister Chen Deming during his separate visit to China in April 2008 focused on problems in the negotiations and possible solutions. Both countries agreed to work to achieve early outcomes which would bring immediate benefit to business. Australia now expects China to present a revised tariff offer on goods, including agriculture, at the June round or shortly thereafter. Notwithstanding the renewed momentum, sensitivities on both sides mean the negotiations will continue to be challenging. The eleventh negotiating round will be held in Beijing in mid-June, 2008.

While China ranks fourth among Australia's seafood export markets, importing principally lobster, abalone and prawns, Australia does not currently have a major presence in China's

²⁰ Customs Amendment (TAFTA) Bill 2004, Customs Tariff Amendment (TAFTA) Bill 2004, p.5.

seafood markets when compared to other major seafood producers. As a source of seafood imports into China, Australia ranks only 17th. China itself is among the world's largest seafood producers and exporters, having the world's largest fisheries fleet and largest aquaculture industry and accounting for over 30 per cent of global seafood production. In fact, China's seafood exports to Australia (principally prawns, fish, crab and frozen fish) are more than double its seafood imports from Australia.

China's tariff rates for the majority of its seafood imports range from 0 to 23 percent, with tariffs for most imports around 15 percent (this is down from as high as 80 percent before WTO accession). Australia's three main seafood exports, lobster, abalone and prawns, face tariffs of up to 15 per cent in the Chinese market. In contrast, Australia's one remaining tariff on seafood imports is its 5 per cent rate on canned tuna.

In the FTA negotiations, the immediate or rapidly phased removal of Chinese tariffs on lobster, abalone and prawn²¹ products needs to be a high-priority objective for Australian negotiators. This has the potential to bring substantial benefits to the Australian industry in the form of improved profit margins and opportunities for greater returns on premium products. In particular, cutting these Chinese tariffs has the potential to eliminate some of the risks that the local industry has faced as a consequence of its recent reliance on the black market. In some cases, such as Rock Lobster, cutting the Chinese tariffs will benefit the Australian industry but will not lead to increased exports to China because the industry already operates to the limit of the seasonal catch quota. Of course, eliminating the Chinese tariffs and the incentive to working through the black market may open the way for Australian businessmen to establish their own distribution activities for seafood in China.

As a potential trade-off in this area, consideration should be given to eliminating Australia's 5 percent tariff rate on canned tuna in relation to Chinese imports. Such a concession was made in Australia's FTA with Thailand, which required Australia to reduce immediately its tariff on canned tuna to 2.5 percent for goods of Thai origin, and to eliminate the tariff altogether by 2007. China is nowhere near as big a threat in the Australian market for canned tuna as Thailand. Thailand is one of the major global producers of canned tuna and is a major source of imports into Australia (it has been observed that there was some "upside" gain to be had in the Chinese market if tuna tariffs were reciprocally eliminated and practically no additional "downside" risk).

More generally, representatives of the seafood industry have also suggested that Chinese authorities might manipulate food safety standards and certification activities and that there is scope for enhanced mutual understanding in the sanitary and phytosanitary area. Another issue cited by the food sector is inconsistency in customs and port procedures across different Chinese ports. These are clearly important issues for Australian negotiators to address, not

²¹ The Queensland-based Australian Prawn Farmers Association has complained about what it calls the "dumping" of poor quality prawns into Australia, which already imports Chinese prawns tariff-free. While an FTA with China provides an opportunity for a level playing field in this area, it is not necessarily the vehicle for addressing genuine concerns about dumping, for which there are already effective processes in place.

only for the benefit of the Australian seafood industry, but also for other producers of food and agricultural products.

(2) ASEAN - Australia/New Zealand

On 30 November 2004, leaders from the 10 ASEAN member countries, Australia and New Zealand announced that negotiations would commence on a free trade agreement (FTA) between Australia, ASEAN and New Zealand in early 2005. Meeting in Laos, the 12 leaders agreed the FTA would be comprehensive, covering trade in goods and services, and investment, and that it should build on individual members' commitments in the WTO. This is the first time ASEAN has agreed to embark on an FTA negotiation that covers all sectors simultaneously (ASEAN's other FTAs are sequential starting with goods first). Leaders also agreed to complete the FTA negotiations within two years and to implement the Agreement fully within 10 years.

Fourteen full negotiating rounds and a number of intersessional meetings have been held since negotiations commenced in March 2005. Negotiations are now in the final phase. However, substantial differences remain on a number of key outstanding issues. An informal meeting of the ASEAN Economic Ministers (AEM) - CER Trade Ministers will be held on 4 May to address some of the key outstanding issues in the negotiations. The fifteenth negotiating round will be held in Hanoi in June 2008. Negotiators are focussed on trying to conclude negotiations by the August 2008 AEM-CER Trade Ministers Consultations to be held in Singapore.

(3) Japan - Australia FTA

In December 2006, Australia and Japan agreed to commence negotiations on a free trade agreement (FTA) in early 2007. The decision to commence negotiations followed the successful conclusion of a joint government study on the feasibility of a bilateral FTA. Thus far, five rounds of negotiations have been held, with the fifth held in the week of 28 April 2008 in Canberra.

The fourth round of negotiations, which was held in Tokyo in February 2008, saw the commencement of market access negotiations on goods. While the details of the negotiations are confidential, Japan's offer had many exclusions on agriculture, including on various items of interest to Australia. Japan also argued the case for its sensitivities on a small number of manufactured goods. Australia made clear to Japan that its offer would need to be improved significantly.

At the fifth round of negotiations, Australia and Japan exchanged initial market access offers on services and investment. Discussions on market access for goods also continued, in addition to discussions on most other areas of the agreement, including customs procedures, e-commerce, government procurement, competition policy and intellectual property. At Japan's request, discussions are also being held on how energy and mineral resources might be dealt with in the FTA.

For Australia as a whole, Japan is the second most important export market for seafood in the world taking just over 29 per cent of the value of exports. Of exports to Japan, the most

important seafood products are tuna, rock lobster, frozen shrimps and aquatic invertebrates (which includes abalone) which make up over 80 per cent of seafood exports to Japan.

Japan is falling in importance as a destination for Australian exports of seafood. For tuna, it takes practically all of Australia's exports, but for rock lobster and abalone the proportion of exports to Japan has fallen from about 21 and 68 percent respectively down to 12 percent for both. Demand from China, either direct or through Hong Kong, China, is the main cause.

Table 6 - Japanese Tariffs and Trade Values for Raw Australian Seafood 2005/2006

Commodity Code	Commodity Description	Imports into Japan	Japanese Tariffs
		Trade value US \$ million	Tariff %
H0-030349	Tunas nes, frozen, whole	84.919	3.5
H0-030613	Shrimps and prawns, frozen	36.916	1.0
H0-030239	Tuna nes, fresh or chilled, whole	32.601	3.5
H0-030621	Rock lobster and other sea crawfish not frozen	28.526	1.0
H0-030611	Rock lobster and other sea crawfish, frozen	22.036	1.0
H0-030799	Aquatic invertebrates nes, frozen or preserved	14.520	3.5-10.0
H0-160590	Molluscs and shellfish nes, prepared or preserved	12.528	6.7-10.0
H0-030791	Aquatic invertebrates nes, fresh or chilled, live	9.271	0.0-7.0 (abalone 7.0)

Source: UNCOMTRADE and WTO tariff schedule

Current Japanese tariffs for raw and intermediate seafood (average 4.3 percent and 2.0 percent) are quite low although some Australian firms see them as being high enough to discourage exports. This is particularly true of some products which contain seafood (average processed seafood tariffs are 9.0 percent). Although Japan does have strict sanitary standards, these are not perceived as being so onerous as to be a significant barrier to trade.

One possible issue that might arise from a free trade agreement could be giving equal access to domestic Australian fishing licenses for Japanese citizens. Given the high value associated with current licenses it is possible that they would attract some interest from commercial fishing interests in Japan. This would not have many implications for tuna farms but it could for rock lobster and abalone licenses.

(4) Australia - Malaysian FTA

Australia's then Prime Minister, John Howard and Malaysian Prime Minister Abdullah Badawi agreed to launch negotiations on a bilateral Free Trade Agreement (FTA) in April 2005. There has been solid progress on goods, investment and intellectual property. The services negotiations are proceeding slowly due to differences in approach. Slippage in negotiations occurred in 2006-07 as Malaysia sought to manage a heavy trade agenda and changes in negotiating personnel. A number of inter-sessional meetings have been held since to advance negotiations in goods, services and investment before convening in full session later in 2008.

As noted earlier in this report, Malaysian tariffs on seafood can be significant: average tariffs are 3.2 percent for raw seafood; 18.0 percent for intermediate seafood products; and, 12.7 percent for processed seafood products.

Both sides have agreed to focus on concluding the regional ASEAN-ANZ FTA negotiations. Not much progress should be expected on an Australia-Malaysia agreement in the near future.

(5) Australia – Chile FTA

Australia's FTA negotiations with Chile were completed on 26 May 2008 and resulted in a high-quality WTO-Plus FTA between the two countries. The agreement will enter into force on 1 January 2009, assuming approval by the two countries' legislative bodies. The negotiations have been substantially assisted by the fact that both Australia and Chile have high-quality FTAs with the United States covering many of the same areas expected to be covered in their bilateral agreement.

The agreement with Chile provides for the elimination of import duties on 97 percent of all bilateral trade upon its entry into force (expected on 1 January 2009). Duties on the remaining 3 percent of tariff lines will be eliminated not later than 2015. Because the Chilean seafood sector is to a large degree in competition with the Australian seafood industry, there are limited benefits foreseen for our seafood industry in the case of this FTA. Liberalisation under an FTA with Chile does pose a potential threat to the Australian seafood industry. Chile's exports of seafood products have increased considerably over the past few years from US\$ 1.3 billion in 2000 to US\$ 2.7 billion in 2006. This is significantly greater than the total for Australian seafood exports which have remained reasonably constant at around US\$ 0.8 billion over the same period (COMTRADE). Fortunately for Australia, Chile was not reported to have any exports of tuna or export large quantities of molluscs and aquatic invertebrates.

(6) Australian FTA with the Gulf Cooperation Council (GCC)

The countries comprising the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) collectively account for AUD\$ 6.2 billion in Australian exports annually (our tenth largest overseas market). A negotiation aimed at concluding a free trade agreement between Australia and the GCC started in mid- 2007. Australia aims to conclude a high quality WTO-Plus FTA with the region, incorporating chapters on government procurement, investment, intellectual property and competition as well as significant outcomes on the liberalization of trade in goods and services. A major objective for Australia is the elimination of GCC duties on imports of automobiles and car parts (the GCC is a significant export market for Australian autos). The negotiations are proceeding slowly, with negotiating sessions scheduled only every six months.

(D) Examples of successful trade negotiating outcomes

From the above, we can see that FTAs are often capable of producing outcomes that can add significantly to liberalization resulting from the multilateral negotiations at the WTO in Geneva. This is particularly the case when the multilateral process is deadlocked. Some examples of successful outcomes from recent Australian free trade agreement negotiations include:

Tariff reduction (AUSFTA) -- Prior to entry into force, 37.6% of US tariff lines were free. AUSFTA eliminated tariffs on an extra 44.8% of tariff lines at entry into force. An additional 4.1% of US tariff lines are scheduled to be eliminated in 2010. By 2015, duties on a further 10.7% of tariff lines, representing 16.2% of Australian imports are to be eliminated. By 2022, 98.4% of tariff lines and 99.9% of imports will be duty-free for products of Australian origin. As noted earlier, U.S. import duties on the full range of Australian seafood exports were eliminated upon entry into force of the AUSFTA, including the very significant elimination of the American 35 percent import duty on canned tuna.

Sanitary & Phytosanitary Measures [Quarantine] (AUSFTA) -- On sanitary and phytosanitary (SPS) measures, AUSFTA provides a framework for cooperation on such matters through the establishment of a Committee on SPS and a Standing Technical Working Group on Animal and Plant Health Measures. The objective of the Committee is to enhance each Party's implementation of the WTO Agreement on SPS, protect human, animal or plant life or health, enhance consultation and cooperation between the Parties on SPS matters and facilitate mutual trade. The Working Group is to serve as a forum for enhanced technical cooperation of specific bilateral animal and plant health matters and early engagement in each Party's risk assessment and regulatory processes regarding such matters.

Sanitary & Phytosanitary Measures [Quarantine] (TAFTA) -- The Thailand-Australia Expert Group on SPS Measures and Food Standards has met four times since TAFTA came into force. It was established as the consultative mechanism to promote and implement the SPS objectives and commitments in the SPS Chapter to strengthen cooperation between agencies that have responsibility for SPS measures and food standards. Issues covered to date have included developments in SPS and food standards regulations; market access issues; reviews of control, inspection and approval arrangements; and cooperation activities. Meetings are structured to include Agreement on a rolling two-year work program. The Department of Agriculture, Forestry and Fisheries considers that the Expert Group is an effective mechanism for consultation on current technical market access issues.

Customs-related Procedures (AUSFTA, SAFTA & TAFTA) -- SAFTA and TAFTA commit to making their customs procedures consistent with international standards and practices. Under AUSFTA, the Parties are required to administer their respective laws, regulations, guidelines, procedures and administrative rulings governing customs matters in an impartial manner and ensure that they are made publicly available promptly. All three FTAs agree to facilitate the clearance of low-risk goods and focus on high risk goods. Advance rulings are provided for in

AUSFTA within 120 days and in TAFTA within 30 working days of the receipt of all necessary information.

Movement of People (TAFTA) -- TAFTA also streamlines and improves the conditions for the movement of business people between Australia and Thailand. Intra-corporate transferees can obtain visas and work permits for up to five years, compared to three years under GATS, while contractors can obtain work permits for up to three years. Australian companies can apply for a work permit on behalf of their employee and obtain notification of the outcome prior to employee's arrival in Thailand. Spouses of Australian investors, intra-corporate transferees and contractual service suppliers are permitted to work as managers, executives or specialists in Thailand. Australian business visitors to Thailand are eligible for a 90-day visa instead of the standard 30-day visa, and can have it extended. However, Thailand does not require Australian citizens visiting Thailand to have work permits if their visit is shorter than 15 days or 90 days for APEC Travel Card Holders. All Australian business visitors to Thailand can now access the Board of Investment 'one-stop shop' for visa and investment approvals, which is a less bureaucratic and time-consuming process.

IV. Other trade issues affecting the seafood industry's interests

(A) Australian Government policy on trade negotiations / trade reform

In general, the Australian Government under PM Rudd can be expected to continue the general trade policies pursued by the Howard Government – albeit with some nuanced changes in focus. Labor in opposition was often critical of Howard Government trade agreements and, in particular, often spoke in opposition to what was seen as an over-emphasis on regional and bilateral trade agreements at a time when the WTO Doha Round was languishing. Prior to the election, Labor issued a policy document on trade policy, the main elements of which are discussed below.

The November 2007 policy document on trade, entitled “A Strong Future for Australia's Exports”, laid out a plan for future trade policy under a Labor Government comprised of seven distinct elements. These elements are:

- (1) A review of export policies and programs – with the stated objective of ensuring that Australia takes maximum advantage of its resource boom and builds export potential in other sectors of the economy;
- (2) Export Market Developments Grants Scheme – Labor promised to increase EMDG funding by \$50 million in 2009-2010;
- (3) Better service from Austrade – Labor promised to revitalize and restructure Austrade, including through the re-establishment of a business advisory board;
- (4) Building services exports – the policy document said that a Rudd Labor Government would work closely to assist the services sector in expanding its export base;
- (5) Expanding financial services exports – Labor promised to work to improve taxation and marketing arrangements that would facilitate an expansion of financial services exports;
- (6) Clean energy export strategy – Labor promised to work with Australian experts to make the country a hub for exports of clean energy technology; and,
- (7) Better trade policy – Labor promised to work hard to achieve the best possible outcomes from trade agreements, especially through multilateral structures, but also acknowledging that there would be an ongoing role for bilateral and regional arrangements.

After taking office, the new Trade Minister, Simon Crean, announced the launch of a Review of export policies and programs. The Review is chaired by David Mortimer AO and he is being assisted by Dr John Edwards. The Institute for International Trade's Executive Director is involved in the Mortimer Review as a member of the FTA Reference Group that will examine Australia's past and prospective participation in free trade agreements.

The Review's terms of reference are reproduced in Appendix 1 to this report. The Review will entail a comprehensive examination of export policies and programs. It will assess the factors behind the recent underperformance of Australia's exports and make recommendations on future policies and programs to promote exports and investment flows, develop export capacity and enhance Australia's international competitiveness.

The Review will also examine foreign direct investment into Australia and Australian direct investment abroad to develop a better understanding of the evolving relationship between trade and investment.

A particular focus of the Review will be on how to construct a more strategic, whole-of-government approach to advancing Australia's international economic and commercial interests.

Observations

As indicated earlier in this section, Labor has assumed office after many years of wandering in the woods in opposition. In this context, it is not surprising that the new Government of PM Rudd feels the need to be seen as critically analysing the policies of its predecessor and being prepared to take new bold steps to enhance the country's trade performance. That said, we expect that the new Government's trade policy will not be much different from that of the Howard Government. We do not expect to see a change in position on Doha Round issues and we expect the Rudd Government to continue FTA negotiations with all of the partner countries where FTA negotiations were initiated by the Howard Government.

(B) Achieving beneficial outcomes in trade for the seafood industry

The Institute for International Trade believes that there are a number of ways in which the Australian seafood industry could work toward achieving better outcomes from ongoing and future trade reform and liberalization initiatives. In some cases, these initiatives can be pursued independently by the industry while in others it will be necessary to secure greater cooperation from the Australian Government in Canberra.

(1) Timely research and reporting on active developments in international trade

In the first instance, achieving a beneficial outcome for the industry in Australia's trade negotiations, depends on the industry having at its disposal expert analysis of (a) the subject matter under discussion in the trade negotiation; (b) the possibilities for using the negotiation to reduce or eliminate barriers faced by the seafood sector in foreign markets; and, (c) the state of play in the negotiations, including the timing of likely agreement and eventual entry into force. It is never too early to begin to develop this information as it will be needed to provide the right kind of advice to government negotiators even before the completion of what have now become regular "feasibility studies" conducted by Australia and its negotiating partners before the actual launch of negotiations.

(2) Effectively expressing the industry view to government negotiators

The Australian Government should have an established mechanism to permit regular consultation and conduct with industry representatives throughout trade negotiations and the

seafood industry should be adequately and permanently represented on such a mechanism. If no such structure currently exists, or if one does exist, but it either operates ineffectively or does not permit adequate representation of the seafood sector, it is important that high-level representations be made to ensure that the situation is corrected. An effective mechanism should not be a one-way street but should allow for input from industry, regular updates from government negotiators, and feedback from industry on developments in the negotiations. The current reviews and assessments launched by Minister Crean make the current period perfect for industry representations along these lines as effective mechanisms for industry consultation will surely produce better trade outcomes.

(3) Building linkages with like-minded seafood sectors in other countries

Some of the best outcomes in international trade negotiations – in particular the so-called zero-for-zero tariff sectoral elimination agreements achieved in the Uruguay Round – were made possible because like-minded industry sectors in important producing countries worked together with each other to press their own and other governments for a trade liberalizing outcome. Assuming that the Australian seafood sector sees its interest in achieving greater international liberalization in trade in fish and fish products, it should ally itself with seafood sectors in those other countries currently pursuing a sectoral outcome in fish as a part of the WTO's NAMA process.

Adelaide, June 2008

APPENDIX 1

TERMS OF REFERENCE FOR THE REVIEW OF EXPORT POLICIES AND PROGRAMS

1. Despite the rapid economic growth of China and India generating unprecedented global demands for energy and mineral resources, Australian exports have underperformed in recent years. Across all major export categories, the growth of export volumes in the past six years has been below the historical average since the floating of the Australian dollar in 1983. While export revenues for resources have grown in the past six years, there has been a slowdown in resource export volumes over that period.
2. In the last Labor Government, net exports made a positive contribution to economic growth in 10 of 13 years. Under the previous Government, net exports made a positive contribution to growth in just 2 out of 11½ years. The export slowdown over the past decade reflected a failure to develop an integrated approach to trade policy and a failure to achieve the necessary productivity gains to drive Australia's international competitiveness.
3. In this context, the Australian Government has commissioned Mr. David Mortimer AO and Dr John Edwards to conduct a comprehensive review of export policies and programs, in consultation with a broad range of industry stakeholders. The review will examine export policy and programs across all Government portfolios and agencies and their linkages to State/Territory programs. It will cover goods, services and investment. This review is to take place in parallel with an analysis of Australia's recent bilateral free trade agreements to assess their net benefits and to develop new benchmarks for Australia's future bilateral and regional trade agreements.
4. The review will examine Australia's trade performance over the past two decades including factors impacting on export growth. It will identify measures to maximize Australia's export competitiveness potential. The review will contribute to the formulation of a more strategic whole-of-government approach to advancing Australia's international economic and commercial interests.
5. The review will bear in mind the Government's desire to optimize the overall economic performance of the Australian economy through productivity gains and deeper integration of the Australian economy and business with the global economy. It will also take into account the Government's commitment to the rules-based multilateral trading system and in particular the World Trade Organization (WTO) Doha negotiations.
6. The review will make an assessment of the challenges and opportunities currently facing Australian exporters and international business. In making this assessment, the review should examine:
 - a) Australia's export performance over the past two decades, identifying factors that are inhibiting export performance, domestic productivity, productive investment flows and international competitiveness;
 - b) the extent to which Australia's trade policies adequately reflect Australia's interests in the contemporary global economy; and
 - c) the coverage, coherence and effectiveness of current trade development services and programs, and the extent to which they adequately address the needs of exporters, importers and investors.

7. The review will make recommendations on any of the issues identified, including:
 - a) measures required to improve export performance, including the relationship with domestic policy settings and productivity-enhancing policies;
 - b) measures which will improve the capacity of new and existing exporters to expand their export base and take optimal advantage of the expansion and evolution in international trade and investment;
 - c) measures to encourage more small businesses to begin exporting or to expand their export operations;
 - d) measures to promote an improved services export performance, including financial services;
 - e) policies and programs that will promote high value added exports, enhanced levels of productivity and improved international competitiveness;
 - f) measures to expand market access opportunities for Australian exporters of goods and services; and
 - g) measures to promote a more concerted and coordinated national approach to lifting export performance.
8. In its recommendations, the review will be mindful of the Government's overall approach to budget policy, Australia's international commitments, the Government's support for the multilateral trade system and the initiatives the Government is in the process of implementing.
9. The review will include specific recommendations about the continuation of the Export Market Development Grants scheme (EMDG), pursuant to section 106A of the EMDG Act 1997.
10. The review is to release a scoping paper for stakeholder consultations by April. The final report will be provided to the Minister for Trade by 31 August 2008.

APPENDIX 2

Abbreviations and Acronyms

ANZCERTA – Australia-New Zealand Closer Economic Relations Trade Agreement
APEC – Asia-Pacific Economic Cooperation
ASEAN – Association of South East Asian Nations
AUSFTA – Australia-United States Free Trade Agreement
CVDs – Countervailing duties
DDA – Doha Development Agenda (The Doha Round of multilateral trade negotiations)
EU – European Union
FTA – Free Trade Agreement
FTAAP – Free Trade Agreement of the Asia-Pacific
GATS – General Agreement on Trade in Services (WTO)
GATT – General Agreement on Tariffs and Trade (WTO)
HS – Harmonized System of tariff nomenclature
ICTSD – International Center for Trade and Sustainable Development
ITO - International Trade Organization (Proposed but never came into force)
LDCs - Least Developed Countries
MEAs – Multilateral environmental agreements
MFN – Most-Favoured Nation treatment (non-discrimination among foreign countries)
NAFTA – North American Free Trade Agreement (United States, Mexico and Canada)
NAMA – Non-agricultural market access (WTO Doha Round)
OECD – Organization for Economic Cooperation and Development
SAFTA – Singapore-Australia Free Trade Agreement
SPS – Sanitary and Phytosanitary [measures] – the basis for quarantine action
SVEs – Small and vulnerable economies
TAFTA – Thailand – Australia Free Trade Agreement
TEDs – Turtle excluder devices
WTO – World Trade Organization

APPENDIX 3: WTO DISPUTES RELATING TO SEAFOOD

WTO Dispute No(s).	Short Case Title	Complainant(s)	Date Initiated	Nature of Complaint	Outcome/Last Development
7, 12, 14	<i>EC – Scallops</i>	Canada, Peru, Chile	19 May 1995 (Canada); 18 July 1995 (Peru); 24 July 1995 (Chile)	The complainants challenged as inconsistent with Articles I and III of the GATT and Article 2 of the <i>TBT Agreement</i> a French Government Order laying down the official name and trade description of scallops. Complainants claimed that the Order would prevent their product from being sold as “Coquille Saint-Jacques” although there is no difference between their scallops and French scallops in terms of colour, size, texture, appearance and use.	Panels were established and constituted but shortly before the panel reports were due to be circulated the parties reached a mutually agreed solution.
18	<i>Australia – Salmon</i>	Canada		Canada challenged an Australian ban on the import of salmon, which was based on quarantine regulations. Canada argued that the prohibition was inconsistent with Articles XI and XIII of the GATT and with various provisions of the SPS Agreement.	A panel and the Appellate Body found Australia’s ban to be inconsistent with

21	<i>Australia – Salmonids</i>	United States	20 November 1995	This dispute concerns the same Australian quarantine regulations challenged by Canada in DS 18	The panel agreed to a request by the US to suspend its work pending the outcome of the case brought by Canada. On 27 October 2000, the parties to the dispute notified a mutually satisfactory solution on the matter to the DSB
58	<i>US – Shrimp</i>	India, Malaysia, Pakistan, Thailand		The complainants challenged as an illegal quantitative restriction under Article XI of the GATT a US prohibition on the import of shrimp from non-certified countries, i.e., countries that did not have in place a regulatory regime requiring the use of nets equipped with turtle excluder devices	The complainants were successful. The US subsequently amended its program to allow more flexibility in obtaining the necessary certification. Malaysia alone challenged the amended system, but the US was successful in defending its more redesigned measure as “relating to the conservation of exhaustible natural resources” and thus justified under Article XX(b) of the GATT
61	<i>US – Shrimp</i>	Philippines		This dispute concerns the same US import prohibition challenged by India, Malaysia, Pakistan and Thailand in DS58.	The Philippines requested consultations with the US, but did not further pursue its complaint.
97	<i>US – CVDs on Shrimp</i>	Chile	5 August 1997	Chile challenged the initiation of a countervailing duty investigation initiated by the US Department of	Chile requested consultations but did not further pursue this complaint.

				Commerce against imports of salmon from Chile. Chile contended that the decision to initiate an investigation was taken in the absence of sufficient evidence of injury, as well as the representative status of the producers of salmon fillets who had filed the petition.	
193	<i>Chile – Swordfish</i>	European Communities	19 April 2000	The EC challenged as inconsistent with Articles V and XI of the GATT Chilean legislation prohibiting the unloading of swordfish in Chilean ports either to land them for warehousing or to transship them onto other vessels.	A panel was established on 12 December 2000. On March 2001, the parties requested suspension of the process on the grounds that they had come to a provisional arrangement concerning this dispute. The Chilean prohibition was imposed in response to alleged EC over fishing, which Chile challenged in front of the International Tribunal for the Law of the Sea. Those proceedings were also suspended at the request of the parties.
205	<i>Egypt – Import Prohibition on Canned Tuna with Soybean Oil</i>	Thailand	22 September 2000	Thailand challenged a prohibition imposed by Egypt on the importation of canned tuna with soybean oil from Thailand, which Thailand considered to be inconsistent with Articles I, XI,	Thailand requested consultations with Egypt but did not further pursue its complaint.

				and XIII of the GATT, and Articles 2, 3 and 5, and Annex B, paragraph 2 and paragraph 5, of the SPS Agreement.	
231	<i>EC – Sardines</i>	Peru	20 March 2001	Peru, which exports <i>sardinops sagax sagax</i> , challenged an EC regulation providing that only products prepared from <i>sardina pichardus</i> could be marketed/labelled as preserved sardines. Peru argued the restriction was inconsistent with the <i>TBT Agreement</i> because the EC had not used an existing and appropriate international standard.	The panel found, and the Appellate Body upheld, that the EC had acted inconsistently with Article 2.4 of the <i>TBT Agreement</i> .
324	<i>US – Provisional Anti-Dumping Measures on Shrimp from Thailand</i>	Thailand	9 December 2004	Thailand requested consultations with the United States concerning provisional anti-dumping measures imposed by the US on certain frozen and canned warm water shrimp from Thailand. Thailand challenged the United States Department of Commerce's use of the practice of "zeroing" negative anti-dumping margins, its use of "adverse facts available", and its failure to make certain adjustments in calculating the dumping margin.	Thailand requested consultations with the US but did not further pursue its complaint.

326, 328	<i>EC – Definitive Safeguard Measure on Salmon</i>	Chile, Norway	8 February 2005 (Chile); 1 March 2005 (Norway)	Chile and Norway challenged as inconsistent with the <i>Agreement on Safeguards</i> the imposition by the EC of a safeguard measure on imports of farmed salmon. The measure consisted of a system of tariff quotas and additional duties on out-of-quota imports; a minimum price applicable to all imports; and a requirement that all importers provide a security as a guarantee of the payment of the actual import price	The safeguard measure at issue was terminated as of 27 April 2005. Norway did not pursue its complaint any further. On 12 May 2005, Chile formally withdrew its request for consultations.
335	<i>US – Shrimp (Ecuador)</i>	Ecuador	17 December 2005	Ecuador challenged the final determination of dumping, the amended determination of dumping, and the accompanying order imposing anti-dumping duties on certain frozen warm water shrimp from Ecuador challenged, in particular, the United States Department of Commerce's use of the practice of "zeroing" negative anti-dumping margins.	A panel sustained Ecuador's claim, finding that the US had acted inconsistently with the <i>Anti-Dumping Agreement</i> in using the "zeroing" methodology.
337	<i>EC – Salmon (Norway)</i>	Norway	17 March 2006	Norway requested consultations with the European Communities concerning Council Regulation (EC) No. 85/2006 of 17 January 2006	A panel held the EC had violated various provisions of the <i>Anti-Dumping Agreement</i> and the panel report was not appealed. The EC is

				imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway.	expected to terminate the anti-dumping duties in the near future.
343	<i>US - Shrimp (Thailand)</i>	Thailand	24 April 2006	Following the imposition of anti-dumping duties on imports, Thailand challenged the United States' use in the Preliminary, Final and Amended Final Determinations of the practice known as "zeroing" negative dumping margins as inconsistent with the <i>Anti-Dumping Agreement</i> and the GATT. Thailand also challenged the United States' enhanced bond requirement and continuous bond requirement, as such and on its application to imports of frozen warm water shrimp from Thailand, as inconsistent with Articles I:1, II, III, XI:1 and XIII:1 of the GATT	On 29 February 2008 a panel ruled in favour of Thailand, finding that both the use of zeroing and the enhanced bond requirement violated the <i>Anti-Dumping Agreement</i> . This panel report is currently under appeal before the Appellate Body.
345	<i>US - Customs Bond Directive</i>	India		India requested consultations with the United States on the Amended Bond Directive and the enhanced bond requirement and continuous bond requirement imposed by the United States on imports of frozen warm water shrimp from India. India contended that the	On 29 February 2008 a panel ruled in favour of India, finding that the enhanced bond requirement violated the <i>Anti-Dumping Agreement</i> and the <i>SCM Agreement</i> . This panel report is currently under appeal

				Amended Bond Directive as such and the enhanced bond requirement are inconsistent with various provisions of the <i>Anti-Dumping Agreement</i> , the <i>SCM Agreement</i> , and the GATT.	before the Appellate Body.
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